

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

JAMES HOWARD MCKINNEY, an
individual; KEITH JAMES MCKINNEY, an
individual, Real Parties in Interest,

Plaintiffs-Appellants,

v.

KONDAUR CAPITAL CORPORATION, a
Delaware corporation; KONDAUR
VENTURE X, LLC, a Delaware LLC;
KONDAUR CAPITAL TRUST SERIES
2009-3, a Delaware statutory trust; OLD
REPUBLIC NATIONAL TITLE
INSURANCE COMPANY; a Minnesota
corporation; M&I MARSHALL & ILSLEY
BANK, et al.,

Defendants-Appellees.

No. 2 CA-CV 11-0032

Pinal County Superior Court
Case No.: CV2010-00970

APPENDIX OF APPELLEE M&I MARSHALL & ILSLEY BANK

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Julie R. Barton, Ariz. Bar No. 022814
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GREENBERG TRAURIG, LLP
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(602) 445-8000
(602) 445-8100 (Facsimile)
*Attorneys for Appellee M&I Marshall
and Ilsley Bank*

INDEX

<u>Record No.</u>	<u>Description</u>	<u>Exhibit</u>
50	Notice of Appeal, dated December 23, 2010	1
	Index of Record-CV2010-000970, dated September 7, 2010	2
	Maricopa County Docket-CV2010-090122, dated July 14, 2011	3
	Pinal County Docket-CV2009-03764	4
	Kondaur Defendants' Consolidated Cross-Motion for Summary Judgment and Opposition to Plaintiffs' Motion for Summary Judgment, dated February 22, 2010	5
	Kondaur Defendants' Separate Statement of Facts in Support of Consolidated Cross-Motion for Summary Judgment and Opposition to Plaintiffs' Motion for Summary Judgment, dated February 22, 2010	6
	M&I Marshall & Ilsley Bank's Joinder in Defendant Folks & O'Connor, PLLC's Motion to Dismiss and The Kondaur Defendants' Consolidated Cross-Motion for Summary Judgment, dated February 23, 2010	7
14	Plaintiffs' Response to Defendants Kondaur's Motion for Summary Judgment, All Joinders, and Plaintiffs' Request for Fees and Sanctions; Request for Time for Discovery Pursuant to ARCP 56(f); Request for Leave, to Then Further Amend the Complaint, dated April 7, 2010	8
21	Kondaur Defendants' Reply in Support of Cross-Motion for Summary Judgment, dated April 27, 2010	9

<u>Record No.</u>	<u>Description</u>	<u>Exhibit</u>
20	M&I Marshall & Ilsley Bank's Joinder in Kondaur Defendants' Reply in Support of Consolidated Cross-Motion for Summary Judgment and Defendant Folks & O'Connor, PLLC's Reply in Support of Motion to Dismiss, dated April 27, 2010	10
	Motion to Dismiss By Defendant Folks & O'Connor, PLLC, dated February 9, 2010	11
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11	Reply in Support of Motion to Dismiss by Defendant Folks & O'Connor, PLLC, dated March 29, 2010	13
	Pinal County Complaint-CV2009-03764, dated September 8, 2009	14
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	Maricopa County Complaint, filed January 4, 2010	16
	Minute Entry Regarding Motion for Change of Venue, dated February 12, 2010	17
2	Plaintiff's Notice of Change of Judge, dated March 12, 2010	18
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<u>Record No.</u>	<u>Description</u>	<u>Exhibit</u>
6	Objection to Plaintiffs' Notice of Change of Judge, dated March 17, 2010	20
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13	Notice/Order Referring to Civil Presiding Judge, dated April 5, 2010	22
29	Notice: Ruling on Motion/Issues Regarding Change of Judge, dated May 26, 2010	23
	Petition for Chapter 7 Bankruptcy Regarding James McKinney, dated July 7, 2010	24
46	Notice of Bankruptcy Stay, dated August 2, 2010	25
	Order from Bankruptcy Court, dated August 11, 2010	26
	Rule 54(b) Judgment on the Merits, filed January 31, 2011	27
37	Minute Entry Regarding Oral Argument, dated July 1, 2010	28
	Notice of Court Re-Affirming Prior Judgment and award of Attorney's Fees and Costs, dated January 31, 2011	29

EXHIBIT 1

RECEIVED

DEC 28 2010

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JAMES MCKINNEY
618 S. Wickiup Road
Apache Junction, Arizona 85119
Propria Persona

**IN THE SUPERIOR COURT OF ARIZONA
PINAL COUNTY**

JAMES MCKINNEY, an individual,
James McKinney, an individual,
Plaintiff(s),

vs.

CASE NO.: CV2010-00970

NOTICE OF APPEAL

**KONDAUR CAPITAL
CORPORATION**, a Delaware
Corporation; **KONDAUR VENTURE X,
LLC**; an Delaware LLC; **KONDAUR
CAPITAL TRUST SERIES 2009-3**, a
Delaware Statutory Trust; **DEUTSCHE
BANK TRUST COMPANY
DELAWARE**, a Delaware Corporation;
PAULA CHASTAIN, an individual;
PETER BAI, an individual; **FOLKS AND
O'CONNOR, PLLC**, an Arizona LLC;
SECURITY TITLE AGENCY, an Arizona
Corporation; **M & I MARSHALL AND
ILSLEY BANK**, a Wisconsin Corporation;
JOHN JONES and JANE DOE JONES,
husband and wife, **JOHN DOES and JANE
DOES I-X**; **ABC CORPORATIONS I-V**;
and **XYZ PARTNERSHIPS I-V**; **ABC
LLCS I-V, XYZ TRUSTS I-V**;
Defendants.

NOTICE IS GIVEN that the above-named Plaintiffs appeal to the Court of
Appeals, of the State of Arizona (Division 2) from all Ruling(s) and Judgment(s)

1 entered on this case, including the latest one for attorneys fees filed/mailed on
2 11/29/2010, (except those dated from January to March 2010). This Order appears
3 to be the final Order in the case, (and due to an earlier reinstatement still pending
4 as of this day as to when final judgment was made), this Notice of Appeal is made
5 herein for certainty.
6

7 Dated this 23rd day of December 2010.
8
9

10
11 By: 

12 James McKinney
13 *Propria Persona*

14
15 By: 

16 James McKinney
17 *Propria Persona*
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CERTIFICATE OF SERVICE

ORIGINAL filed with the Clerk of the Court,
this 23rd day of December 2010, to:

Clerk of the Court
Pinal County Superior Court

A Copy of the foregoing was mailed
this 23rd day of December 2010 to:

Mark L Collins
Robert M. Savage
Gust Rosenfeld, P.L.C
One Church Avenue, Suite 1900
Tucson, Arizona 85701-1627

Laura Sixkiller
Greenberg Traurig, LLP
2375 E. Camelback Road
Phoenix, Arizona 85016

Larry O. Folks
Kathleen A. Weber
FOLKS & O'CONNOR
1850 N. Central Avenue #1140
Phoenix, Arizona 85004

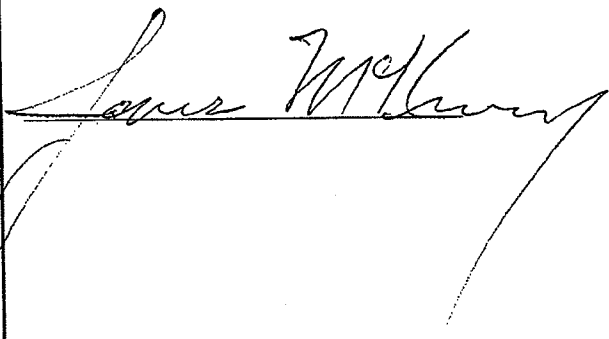


EXHIBIT 2

Index Of Record - Case Num: CV0201000970**Case Title: McKINNEY VS. KONDAUR CAPITAL CORP****DOCUMENTS:**

00001	03/10/2010	CHANGE OF VENUE: Change of Venue Received
00002	03/12/2010	NOTICE: Change of Judge (NOT for Cause)
00003	03/15/2010	OBJECTION: OPPOSITION TO
00004	03/15/2010	Minute Entry: Change of Judg
00005	03/15/2010	Minute Entry: Change of Judg
00006	03/15/2010	RESPONSE: TO MOTION
00007	03/15/2010	REQUEST: Request
00008	03/15/2010	NOTICE: Notice
00009	03/19/2010	OBJECTION: Objection
00010	03/19/2010	MOTION: Joinder
00011	03/30/2010	REPLY: Reply
00012	04/01/2010	CHANGE OF VENUE:CHANGE OF VENUE RECEIVED - ADDITIO
00013	04/05/2010	ORDER: Referring to Presiding Judge
00014	04/07/2010	RESPONSE: TO MOTION
00015	04/08/2010	ANSWER: ANSWER
00016	04/12/2010	NOTICE: Notice
00017	04/12/2010	RESPONSE: RESPONSE
00018	04/13/2010	RESPONSE: RESPONSE
00019	04/20/2010	ORDER: Order
00020	04/27/2010	MOTION: Joinder
00021	04/29/2010	REPLY: Reply
00022	05/03/2010	OBJECTION: OPPOSITION TO
00023	05/05/2010	NOTICE: Filing Service
00024	05/17/2010	OBJECTION: Objection
00025	05/18/2010	REPLY: Reply
00026	05/20/2010	RESPONSE: RESPONSE
00027	05/24/2010	REQUEST: Request
00028	05/25/2010	REPLY: Reply
00029	05/26/2010	MINUTE ENTRY: MINUTE ENTRY (
00030	06/03/2010	MOTION: Joinder
00031	06/04/2010	RESPONSE: RESPONSE
00032	06/08/2010	MOTION: Motion
00033	06/16/2010	ORDER: Granting
00034	06/30/2010	NOTICE: Of Dismissal/Party
00035	06/30/2010	OBJECTION: Objection
00036	06/30/2010	NOTICE: Of removal to Federal Court
00037	07/01/2010	MINUTE ENTRY: MINUTE ENTRY (
00038	07/02/2010	NOTICE: Lodging
00039	07/20/2010	REQUEST: Request
00040	07/20/2010	NOTICE: Lodging
00041	07/20/2010	NOTICE: Filing Judgment
00042	07/20/2010	REQUEST: Request
00043	07/27/2010	ORDER: Extending Time
00044	07/27/2010	ORDER: Order
00045	08/02/2010	MINUTE ENTRY: MINUTE ENTRY (

00046	08/02/2010	NOTICE: Bankruptcy
00047	08/02/2010	OBJECTION: Objection
00048	08/02/2010	OBJECTION: Objection
00049	08/02/2010	OBJECTION: Objection
00050	08/02/2010	NOTICE: APPEAL
00051	08/02/2010	NOTICE: Notice
00052	08/05/2010	Notice: Appeal (Civil)
00053	08/05/2010	SERVICE: Proof of Service
00054	08/11/2010	SERVICE: Certificate

Index Of Record - Case Num: CV0201000970

Case Title: McKINNEY VS. KONDAUR CAPITAL CORP

DOCUMENTS:

00001	03/12/2010	RESPONSE: TO MOTION
00002	03/30/2010	CHANGE OF VENUE:CHANGE OF VENUE RECEIVED - ADDITIO
00003	07/13/2010	ORDER: Order

OFFICE OF THE CLERK OF THE SUPERIOR COURT
PINAL COUNTY

Kristi Youtsey Ruiz
Clerk of the Court

P.O. Box 2730
Florence, Arizona 85232

Tel: (520) 866-5300
Fax: (520) 866-5320

WRITER'S DIRECT LINE: (520) 866-5319

September 7, 2010

Jeffrey Handler, Clerk
Court of Appeals, Div. 2
400 W. Congress, Rm. 200
Tucson, AZ 85701-1374

RECEIVED

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LES

RE: McKINNEY VS. KONDAUR CAPITAL CORP.
Pinal County Case No. CV201000970

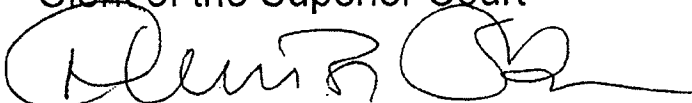
Dear Mr. Handler:

The record on appeal and the supplemental record on appeal, both deemed necessary for appeal purposes, were successfully electronically transmitted this date.

Thank you.

Yours very truly,

KRISTI YOUTSEY RUIZ
Clerk of the Superior Court



By Denise Sowers, Deputy Clerk

cc: Laura Sixkiller, Esq.
Larry O. Folks, Esq.
Mark L. Collins, Esq.
James McKinney, Plaintiff/Appellant
File

EXHIBIT 3

The Judicial Branch of Arizona, Maricopa County**Civil Court Case Information - Case History****Case Information**

Case Number:	CV2010-090122	Judge:	Potts, Karen
File Date:	1/4/2010	Location:	Southeast
Case Type:	Civil		

Party Information

Party Name	Relationship	Sex	Attorney
James McKinney	Plaintiff	Male	Pro Per
Kondaur Capital Corporation	Defendant		Mark Collins
Kondaur Venture X, L L C	Defendant		Mark Collins
Kondaur Capital Trust Series 2009-3	Defendant		Mark Collins
Deutsche Bank Trust Company Delaware	Defendant		Pro Per
Paula Chastain	Defendant	Female	Robert Savage
Peter Bai	Defendant	Male	Robert Savage
Folks And Oconnor P L L C	Defendant		Larry Folks
Security Title Agency	Defendant		Pro Per
M & I Marshall And Ilsley Bank	Defendant		Laura Sixkiller

Case Documents

Filing Date	Description	Docket Date	Filing Party
3/24/2010	REC - Receipt	3/30/2010	
NOTE: CERTIFIED MAIL			
2/26/2010	RDS - Remand Docket Sheet	3/8/2010	
2/26/2010	CME - Credit Memo	3/11/2010	
NOTE: \$26.00 FOR TRANSMITTEE FEE FOR CHANGE OF VENUE FOR KONDAUR CAPITAL			
2/25/2010	CME - Credit Memo	3/8/2010	Plaintiff(1)
NOTE: \$26.00 FOR OTHER 218			
2/23/2010	MOT - Motion	2/24/2010	
NOTE: MI Marshall Ilsley Banks Motion to Strike Plaintiffs Motion for Summary Judgment or Alternatively for Enlargement of Time to Respond to Motion for Summary Judgment or as a Further Alternative, Response in Opposition to Motion for Summary Judgment			
2/23/2010	MTD - Motion To Dismiss	2/24/2010	
NOTE: MI Marshall Ilsley Banks Joinder in Defendant Folks OConnor, PLLCs Motion to Dismiss and the Kondaur Defendants Consolidated Cross-Motion for Summary Judgment			
2/22/2010	MSJ - Motion For Summary Judgment	2/22/2010	
NOTE: Kondaur Defendants Consolidated Cross-Motion for Summary Judgment AND OPPOSITION TO PLAINTIFFS MOTION FOR SUMMARY JUDGMENT			
2/22/2010	SOF - Statement Of Facts	2/23/2010	
NOTE: Kondaur Defendants Separate SEPARATE STATEMENT OF FACTS in Support of Consolidated Cross-MOTION FOR SUMMARY JUDGMENT AND Opposition to Plaintiffs MOTION FOR SUMMARY JUDGMENT			

2/18/2010	MOT - Motion	2/18/2010	
NOTE: Defendant Folks & OConnor, PLLCs Motion to Strike Plaintiffs Motion for Summary Judgment this case was transferred to Pinal county 2/10/10 but transmittal fee has not yet been paid filing is accepted.			
2/12/2010	024 - ME: Change Of Venue Granted	2/12/2010	
2/11/2010	RTM - Returned Mail	2/12/2010	
2/10/2010	RES - Response	2/16/2010	Plaintiff(1)
NOTE: TO DEFENDANT'S KONDAURS' MOTION TO DISMISS AS TO JAMES MCKINNEY AND ALL MOTIONS FOR JOINDER			
2/10/2010	REL - Reply	2/10/2010	
NOTE: MI Marshall Ilsley Banks Joinder in the Kondaur Defendants Consolidated Reply to Plaintiffs Response to Motion to Quash Temporary Restraining Order; Opposition to Request for Preliminary Injunction; and Motion for Change of Venue and Opposition to Plaintiffs Motion to Reverse Trustees Sale and Opposition to Plaintiffs Motion re Standing			
2/10/2010	NAR - Notice Of Appearance	2/11/2010	
NOTE: Notice of Appearance			
2/9/2010	MOT - Motion	2/10/2010	
NOTE: Motion to Dismiss by Defendant Folks OConnor, PLLC			
2/9/2010	MOT - Motion	2/10/2010	
NOTE: Defendant Folks OConnor, PLLCs Motion to Strike			
2/8/2010	REL - Reply	2/9/2010	
NOTE: Joinder of Defendant Folks OConnor, PLLC in Kondaur Defendants Consolidated Reply to Plaintiffs Response to Motion to Quash Temporary Restraining Order; Opposition to Request for Preliminary Injunction; and Motion to Change Venue and Opposition to Plaintiffs Motion to Reverse Trustees Sale and Opposition to Plaintiffs Motions Re Standing			
2/5/2010	OBJ - Objection/Opposition.	2/6/2010	
NOTE: MI Marshall Ilsley Banks Joinder in Kondaur Defendants Opposition to Plaintiffs Motion to Strike			
2/5/2010	REL - Reply	2/6/2010	
NOTE: Consolidated Reply to Plaintiffs Response to Motion to Quash Temporary Restraining Order; Opposition to Request for Preliminary Injunction; and Motion for Change of Venue and Opposition to Plaintiffs Motion to Reverse Trustees Sale and Opposition to Plaintiffs Motions Re Standing			
2/4/2010	NOT - Notice	2/5/2010	
NOTE: Joinder of Defendant Folks & OConnor, PLLC in Kondaur Defendants Opposition to Plaintiffs Motion to Strike - Filing fee \$223.00 paid on receipt #20335524			
2/2/2010	MOT - Motion	2/3/2010	
NOTE: Motion to Strike or Extend Reply Deadline			
2/1/2010	MOT - Motion	2/3/2010	Plaintiff(1)
NOTE: STANDING/ TO FIRST ADJUDICATE DEFENDANTS STANDING AND STRIKE DEFENDANTS PLEADINGS FOR LACK OF STANDING AND REQUEUST TO HOLD DEFENDANTS MOTION TO QUASH IN ABEYANCE UNTIL THAT ADJUDICATION			
2/1/2010	REQ - Request	2/3/2010	Plaintiff(1)
NOTE: FOR A SHORT EXTENSION OF TIME TO RESPOND TO DEFENDANTS MOTION TO QUASH			
2/1/2010	RES - Response	2/3/2010	Plaintiff(1)
NOTE: TO DEFENDANT'S MOTION TO QUASH AND CROSS MOTION TO FIRST ADJUDICATE DEFENDANT'S STANDING AND TO STRIKE DEFENDANT'S PLEADINGS FOR THAT LACK OF STANDING AND REQUEST TO HOLD DEFENDANTS' MOTION TO QUASH IN ABEYANCE UNTIL THAT ADJUDICATION			
2/1/2010	AFF - Affidavit	2/1/2010	Plaintiff(1)

NOTE: IN SUPPORT OF PLAINTIFFS RESPONSE TO DEFENDANTS MOTION TO QUASH AND CROSS MOTION TO 1ST ADJUDICATE DEFENDANTS STANDING AND TO STRIKE DEFENDANTS PLEADINGS FOR THAT LACK OF STANDING AND REQUEST TO HOLD DEFENDANTS MOTION TO QUASH IN ABEYANCE UNTIL THAT ADJUT

2/1/2010	AFF - Affidavit	2/1/2010	Plaintiff(1)
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NOTE: IN SUPPORT OF PLAINTIFFS RESPONSE TO DEFENDANTS MOTION TO QUASH AND CROSS MOTION TO 1ST ADJUDICATE DEFENDANTS STANDING AND TO STRIKE DEFENDANTS PLEADINGS FOR THAT LACK OF STANDING AND REQUEST TO HOLD DEFENDANTS MOTION TO QUASH IN ABEYANCE UNTIL THAT ADJUI

2/1/2010	NOF - Notice Of Filing	2/5/2010	Plaintiff(1)
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NOTE: ATTACHMENTS TO PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION TO QUASH AND CROSS MOTION TO FIRST ADJUDICATE DEFENDANT'S STANDING AND TO STRIKE DEFENDANT'S PLEADINGS FOR THAT LACK OF STANDING AND REQUEST TO HOLD DEFENDANTS' MOTION TO QUASH IN ABEYANCE UNTIL THAT ADJUDICATION

1/29/2010	OBJ - Objection/Opposition.	1/30/2010	
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NOTE: Opposition to Motion to Strike

1/26/2010	MTD - Motion To Dismiss	1/27/2010	
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NOTE: MI Marshall Ilsley Banks Joinder in Motion to Dismiss as to James McKinney (The Relative) / PAID \$223.00 01/27/2010 Receipt #20309328

1/26/2010	MOT - Motion	1/27/2010	
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NOTE: MI Marshall Ilsley Banks Joinder in Motion for Change of Venue

1/26/2010	MOT - Motion	1/27/2010	
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NOTE: Joinder of Defendant Folks OConnor, PLLC in Motion for Change of Venue

1/25/2010	NOF - Notice Of Filing	1/25/2010	
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NOTE: Notice of Filing Corrected Declaration of D. Peter Bai

1/22/2010	MOT - Motion	1/25/2010	
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NOTE: Motion to Dismiss as to James McKinney (The "Relative")

1/22/2010	023 - ME: Order Entered By Court	1/22/2010	
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1/21/2010	AFS - Affidavit Of Service	1/22/2010	
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NOTE: M & I MARSHALL & IISLEY BANK SERVED 01/06/2010

1/21/2010	AFS - Affidavit Of Service	1/22/2010	
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NOTE: FOLKS AND OCONNER PLLC SERVED 01/06/2010

1/21/2010	AFS - Affidavit Of Service	1/22/2010	
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NOTE: KONDAUR CAPITAL CORP. SERVED 01/06/2010

1/21/2010	AFS - Affidavit Of Service	1/22/2010	
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1/21/2010	AFS - Affidavit Of Service	1/22/2010	
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1/21/2010	SUM - Summons	1/22/2010	
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1/21/2010	SUM - Summons	1/22/2010	
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1/21/2010	SUM - Summons	1/22/2010	
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1/20/2010	023 - ME: Order Entered By Court	1/20/2010	
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1/20/2010	MSJ - Motion For Summary Judgment	1/22/2010	Plaintiff(1)
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1/20/2010	MOT - Motion	1/22/2010	Plaintiff(1)
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NOTE: TO STRIKE ALL DEFENDANTS PROVIDENT FUNDING ASSOCIATES LP AND MAX DEFAULT SERVICES CORPS MOTIONS PLEADINGS ETC AND GRANT PLAINTIFF SUMMARY JUDGMENT FOR DEFENDANTS AND DEFENDANTS ATTORNEYS FAILURE TO APPEAR

1/19/2010	NOF - Notice Of Filing	1/20/2010	
NOTE: Notice of Filing Attachments to Motion to Quash TEMPORARY RESTRAINING ORDER; Opposition to Request for Preliminary Injunction; and Motion for Change of Venue			
1/15/2010	APL - Application	1/20/2010	Plaintiff(1)
NOTE: FOR REVERSAL OF LACK OF GOOD FAITH POST T R O TRUSTEE'S SALE			
1/15/2010	MTQ - Motion To Quash	1/19/2010	
NOTE: MOTION TO QUASH TEMPORARY RESTRAINING ORDER; OPPOSITION TO REQUEST FOR PRELIMINARY INJUNCTION; AND MOTION FOR CHANGE OF VENUE - Filing fee \$223.00 paid on receipt #20293948			
1/8/2010	NDC - Notice Of Deposit With Court	1/8/2010	
NOTE: \$250.00/ BOND/ JAMES MCKINNEY			
1/7/2010	NDC - Notice Of Deposit With Court	1/8/2010	
NOTE: \$250.00 SURETY BOND			
1/6/2010	023 - ME: Order Entered By Court	1/6/2010	
1/5/2010	COM - Complaint	1/6/2010	Plaintiff(1)
NOTE: QUIET TITLE BREACH OF CONTRACT VIOLATION OF THE FAIR DEBT COLLECTIONS PRACTICES VILATION OF AZ CONSUMER FRAUD ACT VIOLATION OF TRUTH IN LENDING ACT VIOLATION OF HOME OWNERSHIP AND EQUITY PROTECTION ACT VIOLATION OF THE FAIR DEBT COLLECTIONS PRACTICES			
1/4/2010	COM - Complaint	1/5/2010	Plaintiff(1)
1/4/2010	CCA - Cert Compulsory Arbitration	1/5/2010	Plaintiff(1)

Case Calendar

Date	Time	Event
1/20/2010	16:30	Order To Show Cause

Judgments

There are no judgments on file

EXHIBIT 4

Public Access to Court Information - Case Search

Case Information

Case Number:	S-1100-CV-200903764	Category:	Civil
Title:	MCKINNEY vs KONDAUR CAPITAL CO	Filing Date:	09/08/2009
Court:	Pinal County Superior	Disposition Date:	
Judge:	THE HON WILLIAM J O'NEIL		

PETER BAI DEFENDANT - D 6
PAULA CHASTAIN DEFENDANT - D 5
MARK L COLLINS ATTORNEY - Y 2
DEUTSCHE BANK TRUST COMPANY DELAWARE DEFENDANT - D 4
FOLKS OCONNOR PLLC DEFENDANT - D 7
KONDAUR CAPITAL CORPORATION DEFENDANT - D 1
KONDAUR CAPITAL TRUST SERIES 2009-3 DEFENDANT - D 3
KONDAUR VENTRUE X LLC DEFENDANT - D 2
M&I MARSHALL AND ILSLEY BANK DEFENDANT - D 9
JAMES MCKINNEY PLAINTIFF - P 1
SE PRO ATTORNEY - Y 1
SECURITY TITLE AGENCY DEFENDANT - D 8

Case Activity

Date	Description	Party
09/02/2010	ORDER: Dismissing Case w/o Prejudice	P 1
07/01/2010	MinuteEntry event for MINUTE ENTRY: MINUTE ENTRY (GENERIC)	D 6
07/01/2010	MinuteEntry event for MINUTE ENTRY: MINUTE ENTRY (GENERIC)	D 8
07/01/2010	MinuteEntry event for MINUTE ENTRY: MINUTE ENTRY (GENERIC)	D 3
07/01/2010	MinuteEntry event for MINUTE ENTRY: MINUTE ENTRY (GENERIC)	D 5
07/01/2010	MinuteEntry event for MINUTE ENTRY: MINUTE ENTRY (GENERIC)	D 7
07/01/2010	MinuteEntry event for MINUTE ENTRY: MINUTE ENTRY (GENERIC)	D 4
07/01/2010	MinuteEntry event for MINUTE ENTRY: MINUTE ENTRY (GENERIC)	D 9
07/01/2010	MinuteEntry event for MINUTE ENTRY: MINUTE ENTRY (GENERIC)	P 1
07/01/2010	MinuteEntry event for MINUTE ENTRY: MINUTE ENTRY (GENERIC)	D 2
07/01/2010	MinuteEntry event for MINUTE ENTRY: MINUTE ENTRY (GENERIC)	D 1
03/10/2010	MinuteEntry event for MINUTE ENTRY: MINUTE ENTRY (GENERIC)	D 6
03/10/2010	MinuteEntry event for MINUTE ENTRY: MINUTE ENTRY (GENERIC)	D 8
03/10/2010	MinuteEntry event for MINUTE ENTRY: MINUTE ENTRY (GENERIC)	D 3
03/10/2010	MinuteEntry event for MINUTE ENTRY: MINUTE ENTRY (GENERIC)	D 5
03/10/2010	MinuteEntry event for MINUTE ENTRY: MINUTE ENTRY (GENERIC)	D 7
03/10/2010	MinuteEntry event for MINUTE ENTRY: MINUTE ENTRY (GENERIC)	D 4

03/10/2010	MinuteEntry event for MINUTE ENTRY: MINUTE ENTRY (GENERIC)	D 9
03/10/2010	MinuteEntry event for MINUTE ENTRY: MINUTE ENTRY (GENERIC)	P 1
03/10/2010	MinuteEntry event for MINUTE ENTRY: MINUTE ENTRY (GENERIC)	D 2
03/10/2010	MinuteEntry event for MINUTE ENTRY: MINUTE ENTRY (GENERIC)	D 1
02/16/2010	APPLICATION: APPLICATION	D 1
01/26/2010	MinuteEntry event for MINUTE ENTRY: MINUTE ENTRY (GENERIC)	D 6
01/26/2010	MinuteEntry event for MINUTE ENTRY: MINUTE ENTRY (GENERIC)	D 8
01/26/2010	MinuteEntry event for MINUTE ENTRY: MINUTE ENTRY (GENERIC)	D 3
01/26/2010	MinuteEntry event for MINUTE ENTRY: MINUTE ENTRY (GENERIC)	D 5
01/26/2010	MinuteEntry event for MINUTE ENTRY: MINUTE ENTRY (GENERIC)	D 7
01/26/2010	MinuteEntry event for MINUTE ENTRY: MINUTE ENTRY (GENERIC)	D 4
01/26/2010	MinuteEntry event for MINUTE ENTRY: MINUTE ENTRY (GENERIC)	D 9
01/26/2010	MinuteEntry event for MINUTE ENTRY: MINUTE ENTRY (GENERIC)	P 1
01/26/2010	MinuteEntry event for MINUTE ENTRY: MINUTE ENTRY (GENERIC)	D 2
01/26/2010	MinuteEntry event for MINUTE ENTRY: MINUTE ENTRY (GENERIC)	D 1
01/20/2010	NOTICE: Appearance	D 1
01/06/2010	NOTICE: Of Dismissal/Party	D 6
01/06/2010	NOTICE: Of Dismissal/Party	D 3
01/06/2010	NOTICE: Of Dismissal/Party	D 5
01/06/2010	NOTICE: Of Dismissal/Party	D 7
01/06/2010	NOTICE: Of Dismissal/Party	D 4
01/06/2010	NOTICE: Of Dismissal/Party	D 9
01/06/2010	NOTICE: Of Dismissal/Party	D 2
01/06/2010	NOTICE: Of Dismissal/Party	D 1
11/20/2009	REPLY: Reply	D 7
11/10/2009	RESPONSE: TO MOTION	P 1
10/26/2009	MinuteEntry event for MINUTE ENTRY: MINUTE ENTRY (GENERIC)	D 9
10/26/2009	RESPONSE: TO MOTION	P 1
10/19/2009	MOTION: Dismiss	D 7
09/30/2009	MinuteEntry event for MINUTE ENTRY: MINUTE ENTRY (GENERIC)	D 9
09/22/2009	MOTION: Dismiss	D 8
09/18/2009	NOTICE: Filing Summons	D 8
09/18/2009	NOTICE: Filing Summons	D 8
09/18/2009	SERVICE: Certificate	D 8
09/18/2009	NOTICE: Filing Summons	D 7
09/18/2009	SERVICE: Certificate	D 7
09/18/2009	NOTICE: Filing Summons	D 1
09/18/2009	SERVICE: Certificate	D 1
09/09/2009	APPLICATION: FOR TEMPORARY RESTRAINING ORDER	P 1
09/09/2009	MinuteEntry event for MINUTE ENTRY: MINUTE ENTRY (GENERIC)	D 1
09/08/2009	ARBITRATION: Certificate of Compulsory Arbitration	P 1
09/08/2009	COMPLAINT: Complaint	P 1
09/08/2009	MISCELLANEOUS: Information Sheet	P 1
09/08/2009	NOTICE: Lis Pendens	P 1

NOTES:

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EXHIBIT 5

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LES

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11 *Kondaur Venture X, LLC; and Kondaur Capital Trust Series 2009-3*

12
13 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
14 **IN AND FOR THE COUNTY OF MARICOPA**

15 JAMES MCKINNEY, an individual,
16 JAMES MCKINNEY, an individual,
17 Real Parties In Interest,

18 Plaintiffs,

19 vs.

20 KONDAUR CAPITAL CORPORATION,
21 a Delaware corporation; KONDAUR
22 VENTURE X, LLC, a Delaware LLC;
23 KONDAUR CAPITAL TRUST SERIES
24 2009-3, a Delaware statutory trust;
25 DEUTSCHE BANK TRUST COMPANY
26 DELAWARE, a Delaware corporation;
PAULA CHASTAIN, an individual;
PETER BAI, an individual; FOLKS AND
O'CONNOR, PLLC, an Arizona LLC;
SECURITY TITLE AGENCY, an Arizona
corporation; M&I MARSHALL AND
ILSLEY BANK, a Wisconsin corporation;
JOHN DOES and JANE DOES, husband
and wife; JOHN DOES and JANE DOES I-
X; ABC CORPORATIONS I-V; XYZ
PARTNERSHIPS I-V; and ABC LLCs I-V;
XYZ TRUSTS I-V,

Defendants.

No. CV2010-090122

**KONDAUR DEFENDANTS'
CONSOLIDATED CROSS-MOTION
FOR SUMMARY JUDGMENT**

AND

**OPPOSITION TO PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT**

(Hon. Karen Potts)

1 It is undisputed that Plaintiff James McKinney ("Borrower") borrowed more than
2 \$400,000 to build a house on the "Subject Property." Having failed to repay that debt, the
3 Borrower and his son, Plaintiff James McKinney ("Relative"), have filed this lawsuit alleging
4 eleven separate causes of action, each of which they claim would result in the Borrower taking
5 the Subject Property free of his unpaid debt. Upon scrutiny, each of Plaintiffs' claims fails as a
6 matter of law. Accordingly, the "Kondaur Defendants"¹ are entitled to summary judgment
7 bringing this matter to a close.
8

9 RELEVANT CHRONOLOGY

10 The facts of this case are rather straightforward. In February 2007, the Borrower
11 borrowed \$408,458.00 ("McKinney Loan") from Defendant M & I Marshall & Ilsley Bank
12 ("M&I") for the construction of a house on the Subject Property. [Separate Statement of Facts
13 ("SOF") ¶1] The McKinney Loan was evidenced by a Promissory Note signed by the
14 Borrower ("McKinney Note"). [SOF ¶2] Repayment of the McKinney Note was secured by a
15 deed of trust executed by the Borrower ("McKinney Trust Deed") encumbering the Subject
16 Property. [SOF ¶3] M&I was the named beneficiary under the McKinney Trust Deed. [SOF
17 ¶3]
18

19 Beginning in February 2009, the Borrower stopped making the payments required by
20 the McKinney Note. [SOF ¶4] As a result of the Borrower's default, Defendant Folks &
21 O'Connor ("Folks"), in its capacity as trustee under the McKinney Trust Deed, mailed and
22 recorded a Notice of Trustee's Sale ("Sale Notice") on June 5, 2009. [SOF ¶5] The "Trustee's
23 Sale" was originally scheduled for September 9, 2009. [SOF ¶5]
24

25 ¹ The Kondaur Defendants consist of Kondaur Capital Corporation, Kondaur Venture X, LLC, Kondaur
26

1 On August 4, 2009, M&I assigned its interest in the McKinney Note and the McKinney
2 Trust Deed to Defendant Kondaur Capital Corp. ("Kondaur Capital"). [SOF ¶6] That
3 assignment was accomplished through an indorsed allonge ("McKinney Allonge") and an
4 Assignment of Deed of Trust ("McKinney Assignment") recorded on September 2, 2009. [SOF
5 ¶6] The existence of the McKinney Assignment was disclosed to the Borrower through a
6 written Notice of Assignment mailed to him in July 2009. [SOF ¶7]

7
8 On August 8, 2009, the Borrower filed a lawsuit in Pinal County Superior Court ("Pinal
9 Lawsuit") seeking to stop the Trustee's Sale. [SOF ¶8] Although the Borrower's request for a
10 temporary restraining order was denied in the Pinal Lawsuit, Kondaur Capital voluntarily and
11 repeatedly postponed the Trustee's Sale to facilitate settlement discussions. [SOF ¶9] The last
12 voluntary postponement occurred on December 15, 2009, at which time the Trustee's Sale was
13 rescheduled for January 5, 2010 at 9:05 AM.² [SOF ¶17] This litigation followed.

14 DISCUSSION

15 I. Kondaur Capital is Entitled to Enforce the McKinney Note and the McKinney 16 Trust Deed.

17 The Plaintiffs declare in their Complaint, that Kondaur Capital's "lack of standing
18 pursuant to A.R.S. § 47-3302" is "the primary cause of this complaint." [See Complaint at ¶25]
19 Section 47-3302 merely defines "holder in due course." According to Plaintiffs, Borrower's
20 own default makes the McKinney Note unenforceable by the Kondaur Defendants. The
21 Plaintiffs are incorrect.

22
23 Contrary to Plaintiffs' argument, holder-in-due-course status is not the *sine qua non* of
24

25 Capital Trust Series 2009-3, Paula Chastain, and Peter Bai.

26 ² Although the Trustee's Sale was held, a trustee's deed has not yet been recorded.

1 note enforceability. Section 47-3301, A.R.S., declares: "'Person entitled to enforce' an
2 instrument means the *holder* of the instrument" (Emphasis added). As it relates to this
3 case, a "holder" is defined as "the person in possession of a negotiable instrument that is
4 payable either to bearer or to an identified person that is the person in possession." A.R.S. § 47-
5 1201(21)(a). See also *Black's Law Dictionary* at 731 (6th ed. 1990) ("The holder of a . . .
6 promissory note . . . is the person who has legally acquired possession of the same, by
7 indorsement or delivery, and who is entitled to receive payment of the instrument.").

9 The distinction between a "holder" and a "holder in due course" is that a "holder-in-due-
10 course is free from all personal defenses" against the instrument while a holder is not. *Great*
11 *Western Bank and Trust Co. v. Pima Sav. and Loan Ass'n*, 149 Ariz. 364, 367, 718 P.2d 1017,
12 1020 (App. 1986). Nevertheless, a holder need not be a holder in due course to enforce a note.
13 *Fletcher v. Hill*, 10 Ariz. App. 351, 353-54, 458 P.2d 971, 973-74 (1969). Indeed, as explained
14 in *Fletcher*, holder in due course status "merely protects such holders from defects in the note."
15 *Id.* Absent such a defect, a holder is fully entitled to enforce a promissory note. *Id.*

17 There is no debate that Kondaur Capital is the holder of the McKinney Note. The
18 McKinney Allonge specifically indorsed the McKinney Note. And, although indorsed in
19 blank, the McKinney Note is undeniably in the possession of Kondaur Capital. [SOF ¶6] See
20 A.R.S. § 47-3205(B) ("When indorsed in blank, an instrument becomes payable to bearer and
21 may be negotiated by transfer of possession alone until specially indorsed."). The recorded
22 McKinney Assignment is further evidence that Kondaur Capital is the holder of the McKinney
23 Note and, therefore, entitled to enforce it. Thus, there has been no splitting of the McKinney
24 Note and the McKinney Trust Deed.

26 Nor is this a case where there are defects in the McKinney Note preventing its

1 enforcement. The Borrower does not deny executing the McKinney Note and receiving the
2 proceeds from the McKinney Loan. Indeed, the Borrower's only asserted basis to escape
3 repaying the McKinney Note is that the Borrower had already defaulted when Kondaur Capital
4 acquired the note. But it would truly be an absurd result if the Borrower could extinguish his
5 promise to repay the McKinney Loan simply by breaking it. If that were the case, it would be
6 impossible to collect debts, the lending of money would cease and commerce would come to a
7 screeching halt. Because there is no actual defect in the McKinney Note, Plaintiffs' holder-in-
8 due-course argument fails as a matter of law.

10 Count I of Plaintiffs' Complaint seeks quiet title based entirely on Plaintiffs' holder-in-
11 due-course argument. Because that argument fails, so too does Count I. Plaintiffs simply
12 cannot rely on the Borrower's own default to magically obtain title to the Subject Property free
13 of the underlying debt owed by the Borrower.

14 Likewise, Count II is based entirely on Plaintiffs' holder-in-due-course argument.
15 Because Kondaur Capital is the holder of the McKinney Note and because the Borrower's
16 default cannot prevent enforcement of that note, Count II fails as a matter of law.

18 Counts VIII and XII³ are similarly deficient. Additionally, to the extent that Counts
19 VIII and XII claim that Kondaur Capital's interest is invalid because it was not recorded, they
20 are incorrect. *See* A.R.S. § 33-412. The McKinney Assignment was, indeed, recorded.

21 **II. The Kondaur Defendants did not Breach Any Contract**

22 Count III of Plaintiffs' Complaint alleges that "Plaintiff and Defendants entered into a
23 variety of agreements" and "Defendants breached all of the agreements." [Complaint at ¶¶ 158
24

25
26 ³ Count XII is the last count of the Complaint. Although numbered twelve, it is, in fact the eleventh cause of
action asserted in the Complaint.

1 and 159] The only agreement involved in this case is the agreement to loan the Borrower more
2 than \$400,000 as evidenced by the McKinney Note and the McKinney Trust Deed.

3 There is no doubt that the Borrower received the benefit of the McKinney Loan to
4 construct a house on the Subject Property. Although the Borrower has admitted that he
5 defaulted on his obligation to repay the McKinney Loan, he has not identified how any of the
6 Defendants, much less the Kondaur Defendants breached that agreement. Consequently, Count
7 III fails.
8

9 To the extent Plaintiffs are arguing that alleged violations of the federal Real Estate
10 Settlement Procedures Act ("RESPA"), 12 U.S.C. §§ 2601 through 2617, excuse Borrower's
11 performance of his obligation to repay the McKinney Loan, they are incorrect. First, the
12 alleged violations do not exist. Second, and perhaps more importantly, nothing in RESPA
13 vitiates a borrower's obligation to repay a debt.
14

15 Plaintiffs' RESPA allegations involve a purported failure to respond to a "qualified
16 written request" pursuant to 12 U.S.C. § 2605(e). That section permits a borrower to submit
17 written questions regarding the "servicing" of a loan. 12 U.S.C. § 2605(e)(1)(A). The term
18 "servicing" means "receiving any scheduled periodic payments from a borrower pursuant to the
19 terms of any loan." 12 U.S.C. § 1605(i). A qualified written request regarding loan servicing
20 must "include[] a statement of the reasons for the belief of the borrower, to the extent
21 applicable, that the account is in error or provides sufficient detail to the servicer regarding
22 other information sought by the borrower." 12 U.S.C. § 2605(e)(1)(B)(ii).
23

24 Contrary to Plaintiffs' assertions, the Kondaur Defendants appropriately responded to
25 each of the Borrower's various letters attempting to forestall foreclosure. The Kondaur
26 Defendants received the first such letter, titled "Written Notice of Loan Dispute" ("Dispute

1 Notice") on August 17, 2009. [SOF ¶11] The next day the Kondaur Defendants responded in
2 writing to the Dispute Notice informing the Borrower that, *inter alia*, the "security interest in
3 your property remains intact and is fully enforceable." [SOF ¶12] Subsequently, the Kondaur
4 Defendants received from the Borrower written correspondence dated August 18, 2009 and
5 titled "Notice of Loan Rescission" ("Rescission Notice"). [SOF ¶13] On August 24, 2009, the
6 Kondaur Defendants responded in writing to the Rescission Notice informing the Borrower
7 that: "[T]he right to rescind does not apply to 'a residential mortgage transaction' pursuant to
8 Regulation Z § 226.23(f)(1). A 'residential mortgage transaction' is defined by the Truth in
9 Lending Act in 15 U.S.C. § 1602(w) as a transaction in which 'a security interest . . . is created .
10 . . . to finance the acquisition or initial construction of . . . [a] . . . dwelling.'" [SOF ¶14]

12 On August 20, 2009, the Kondaur Defendants received from the Borrower written
13 correspondence titled "Qualified Written Request, Complaint, Dispute of Debt and Validation
14 of Debt Letter, TILA Request" ("Servicing Request"). [SOF ¶15] The Servicing Request was
15 twenty-one pages long and contained almost two-hundred questions, virtually none of which
16 had to do with the servicing of the McKinney Loan. [SOF ¶15] On September 21, 2009 the
17 Kondaur Defendants responded in writing to the Servicing Request and provided the Borrower
18 with true and accurate copies of: (1) the McKinney Note; (2) the McKinney Trust Deed; (3)
19 the payment history on the McKinney Loan; (4) the Final Settlement Statement generated when
20 the McKinney Loan was funded; and (5) the written notices sent to Borrower informing him
21 that the McKinney Loan had been assigned to Kondaur Capital. [SOF ¶16]

23 On December 26, 2009, the Kondaur Defendants received written correspondence from
24 the Borrower dated December 24, 2009 ("December Letter") in which the Borrower claimed to
25 "have grave doubts to whom I am dealing with [sic]" and demanded to negotiate with the "Real
26

1 Party in Interest." [SOF ¶18] On January 4, 2010, the Kondaur Defendants responded in
2 writing to the December Letter informing Borrower, *inter alia*, that: "As you are very well
3 aware , you have been working with Kondaur, the current Note Holder, for the last six (or
4 more) months in order to resolve the delinquency of your mortgage." [SOF ¶19] Included with
5 the Kondaur Defendants' written response to the December Letter were copies of: (1) the
6 recorded McKinney Assignment; (2) the Dispute Notice; (3) the Kondaur Defendants' response
7 to the Dispute Notice; (4) the Servicing Request; and (5) the Kondaur Defendants' response to
8 the Servicing Request, including all attachments thereto. [SOF ¶19]

10 In sum, although none of the Borrower's letters clearly identified any reasons that the
11 Borrower believed the servicing of the account to be in error, the Kondaur Defendants provided
12 the Borrower with copies of: (1) the McKinney Note; (2) the McKinney Trust Deed; (3) the
13 recorded McKinney Assignment; (4) the payment history on the McKinney Loan; (5) the Final
14 Settlement Statement generated when the McKinney Loan was funded; (6) and the written
15 notices sent to Borrower informing him that the McKinney Loan had been assigned to Kondaur
16 Capital. In spite of all the information supplied to the Borrower, he continued to feign
17 ignorance regarding Kondaur Capital's possession of the McKinney Note. Be that as it may,
18 Kondaur's responses fully satisfy its obligations under 12 U.S.C. § 2605(e).

20 Moreover, even if Plaintiffs could establish a RESPA violation, it does not vitiate the
21 Borrower's obligation to repay the McKinney Loan. As stated in 12 U.S.C. § 2615: "Nothing
22 in this chapter shall affect the validity or enforceability of any sale or contract for the sale of
23 real property or any loan, loan agreement, mortgage, or lien made or arising in connection with
24 a federally related mortgage loan." In short, the Borrower simply cannot use RESPA to evade
25 his obligation to repay the McKinney Loan.
26

1 **III. The Kondaur Defendants Have Not Committed Consumer Fraud.**

2 Count IV of Plaintiffs' Complaint alleges a private action under Arizona's Consumer
3 Fraud Act. A.R.S. §§ 44-1521 *et seq.* "To succeed on a claim of consumer fraud, a plaintiff
4 must show a false promise or misrepresentation made in connection with the sale or
5 advertisement of merchandise and consequent and proximate injury resulting from the
6 promise." *Kuehn v. Stanley*, 208 Ariz. 124, ¶16, 91 P.3d 346, ¶16 (App. 2004). A plaintiff
7 must also establish detrimental reliance on the alleged misrepresentation. *Id.*
8

9 Here the Kondaur Defendants are merely enforcing preexisting instruments, specifically
10 the McKinney Note and the McKinney Trust Deed. As such, the Kondaur Defendants did not
11 sell or advertise anything to Plaintiffs. Thus, Plaintiffs' consumer fraud action fails from its
12 inception.

13 Moreover, there is no evidence that the Kondaur Defendants made any
14 misrepresentations or false statements in their efforts to enforce the McKinney Note or the
15 McKinney Trust Deed. Nor is there any evidence that Plaintiffs relied, justifiably or otherwise,
16 to their detriment on any representations of the Kondaur Defendants. Indeed, Plaintiffs have
17 refused to enter into any agreement with the Kondaur Defendants. It is difficult to conceive
18 how Plaintiffs detrimentally relied on any statements by the Kondaur Defendants when
19 Plaintiffs have not entered into any agreements with the Kondaur Defendants.
20

21 **IV. Plaintiffs Are Not Entitled to Relief Under the Truth in Lending Act.**

22 Plaintiffs' fifth cause of action seeks alternative relief of quiet title or damages under the
23 federal Truth in Lending Act ("TILA"). 15 U.S.C. §§ 1601 *et seq.* TILA does not, however,
24 provide any basis for quiet title. Additionally, Plaintiffs' cause of action for damages for
25 alleged TILA violations is barred by the statute of limitations.
26

1 **A. The Borrower has no right to rescind under TILA.**

2 Apparently, the Borrower seeks quiet title based on the limited right of rescission
3 codified in 15 U.S.C. § 1635. However, that section expressly exempts from rescission "a
4 residential mortgage transaction as defined in section 103(w)."⁴ 15 U.S.C. § 1635(e)(1).
5 Section 103(w) defines a "residential mortgage transaction" as: "a transaction in which a
6 mortgage, deed of trust, purchase money security interest arising under an installment sales
7 contract, or equivalent consensual security interest is created or retained against the consumer's
8 dwelling to finance the acquisition or initial construction of such dwelling." 15 U.S.C. §
9 1602(w). To the extent any clarification was necessary, the Federal Reserve Board has adopted
10 "Regulation Z," 12 C.F.R. Part 226, pursuant to its authority under TILA. See 15 U.S.C.
11 §1603. As made abundantly clear in Regulation Z: "The right to rescind does not apply to the
12 following: (1) A residential mortgage transaction." 12 C.F.R. Part 226.23(f)(1).
13

14 As noted above, the McKinney Loan was for the construction of a dwelling. As such,
15 the McKinney Loan is expressly excluded from the limited right of rescission included within
16 TILA.⁵ 15 U.S.C. § 1635(f)(1); 12 C.F.R. Part 226.23(f)(1). Thus, McKinney has no basis to
17 rescind the McKinney Loan or to seek quiet title based on TILA.
18

19 **B. Plaintiffs' claims for TILA damages are time barred.**

20 Civil liability for TILA violations is governed by 15 U.S.C. § 1640. Under that section,
21 an action for damages must be brought "within one year from the date of the occurrence of the
22 violation." 15 U.S.C. § 1640(e). The date of the violation refers to the date "the loan
23 documents were signed." *Meyer v. Ameriquest Mortgage Co.*, 342 F.3d 899, 902 (9th Cir.
24

25

26 ⁴ The referenced Section 103(w) is codified as 15 U.S.C. § 1602(w).

1 2003).

2 The McKinney Loan documents were signed in February 2007. Consequently, any
3 action for damages under TILA expired in February 2008. The present lawsuit was not filed
4 until January 2010 and is, therefore, barred.

5 It is further worth noting that Plaintiffs' alleged TILA violations were not committed by
6 the Kondaur Defendants. As an assignee of the McKinney Note, the Kondaur Defendants can
7 be liable under TILA "only if the violation for which such action or proceeding is brought is
8 apparent on the face of the disclosure statement." 15 U.S.C. § 1641(a). Plaintiffs have not
9 identified any specific TILA disclosure violations, much less shown that they were apparent on
10 the face of any TILA disclosure statements.

12 **V. Plaintiffs are not entitled to relief under Home Owners Equity Protection Act.**

13 Count VI of Plaintiffs' Complaint seeks quiet title or damages under the federal Home
14 Ownership and Equity Protection Act ("HOEPA"). 15 U.S.C. § 1639. However, HOEPA has
15 no application to this case. And, even if HOEPA applied it provides no basis for quiet title and
16 Plaintiffs' claim for damages is barred by the statute of limitations.

18 **A. HOEPA is inapplicable.**

19 HOEPA was adopted to supplement TILA by requiring additional disclosures in a
20 narrow class of mortgages defined in 15 U.S.C. § 1602(aa). 15 U.S.C. § 1639(a). As explained
21 in 15 U.S.C. § 1602(aa):

22 (1) A mortgage referred to in this subsection means a consumer
23 credit transaction that is secured by the consumer's principal
24 dwelling, *other than a residential mortgage transaction*, a
reverse mortgage transaction, or a transaction under an open end

25 5 Even if rescission were possible, the Borrower would be required to return the proceeds of the McKinney Loan
26 as a condition of such rescission. 15 U.S.C. § 1635(b).

1 credit plan, if—

2 (A) the annual percentage rate at consummation of the
3 transaction will exceed by more than 10 percentage points the
4 yield on Treasury securities having comparable periods of
5 maturity on the fifteenth day of the month immediately preceding
6 the month in which the application for the extension of credit is
7 received by the creditor; or

8 (B) the total points and fees payable by the consumer at or before
9 closing will exceed the greater of—

10 (i) 8 percent of the total loan amount; or

11 (ii) \$400. (Emphasis added).

12 Thus, by its own terms, HOEPA does not apply to "residential mortgage transactions." As
13 noted above, 15 U.S.C. § 1602(w) defines a "residential mortgage transaction" as: "a
14 transaction in which a mortgage, deed of trust, purchase money security interest arising under
15 an installment sales contract, or equivalent consensual security interest is created or retained
16 against the consumer's dwelling to finance the acquisition or initial construction of such
17 dwelling."

18 Because the McKinney Loan was a residential mortgage transaction, HOEPA does not
19 apply. And, even if that were not the case, HOEPA does not apply because the McKinney
20 Loan was not a high interest loan under 15 U.S.C. § 1602(aa)(1)(A). Nor did the "total points
21 and fees payable by the consumer at or before closing" exceed "8 percent of the total loan
22 amount." 15 U.S.C. § 1602(aa)(1)(B). Indeed, the final settlement statement for the McKinney
23 Loan reflects total fees of \$2,635.33 or less than 1% of the total loan amount.⁶ [SOF ¶1] This
24 is far less than the threshold amount required to trigger HOEPA disclosures under 15 U.S.C. §

25
26 ⁶ To be precise, the total fees charged in connection with the McKinney Loan were 0.64% of the total loan amount
(\$2,635.33 ÷ \$408,458). [SOF ¶1]

1 1602(aa)(1)(B).

2 **B. Plaintiffs have no right to rescind under HOEPA.**

3 Even assuming *arguendo* that HOEPA applied, that statute contains no independent
4 right of rescission. See generally 15 U.S.C. § 1639. Thus, to the extent a rescission could be
5 justified based on a HOEPA violation, it must be accomplished through the provisions of 15
6 U.S.C. § 1635. As discussed above, "residential mortgage transactions," such as the one at
7 issue here, are exempt from rescission. 15 U.S.C. § 1635(e).

9 **C. Plaintiffs' claims for HOEPA damages are time barred.**

10 Like TILA, civil liability for HOEPA violations is governed by 15 U.S.C. § 1640. As
11 discussed above, an action for damages must be brought within one year of signing the loan
12 documents. 15 U.S.C. § 1640(e). Consequently, even if Plaintiffs had HOEPA claims, they
13 expired in February 2008 almost two years before this action was filed.

14 **VI. Plaintiffs Are Not Entitled to Relief Under the Fair Debt Collection Practices Act.**

15 Plaintiffs' seventh cause of action alleges that they are entitled to quiet title or damages
16 for violations of the Fair Debt Collection Practices Act. 15 U.S.C. § 1692. According to
17 Plaintiffs, such relief is appropriate because the Borrower disputed the debt and, according to
18 Plaintiffs, the Kondaur Defendants did not verify this disputed debt in accordance with 15
19 U.S.C. § 1692g(b). Given the Borrower's admission that he stopped making payments on the
20 McKinney Note, the feigned dispute over the debt was nothing more than a thinly veiled
21 attempt to forestall foreclosure. Be that as it may, the Kondaur Defendants adequately verified
22 the debt before proceeding with the Trustee's Sale.

24 Section 1692g(b), 15 U.S.C., states in pertinent part:

26 If the consumer notifies the debt collector in writing . . . that the

1 debt, or any portion thereof, is disputed, or that the consumer
2 requests the name and address of the original creditor, the debt
3 collector shall cease collection of the debt, or any disputed
4 portion thereof, until the debt collector obtains verification of the
5 debt"

6 A debt collector satisfies its obligations under 15 U.S.C. § 1692g(b) if it provides the debtor
7 with a copy of his contract with the original creditor and evidence of non-payment of the debt.
8 *Senfile v. Landau*, 390 F.Supp.2d 463, 474 n.11 (D. Md. 2005).

9 As noted above, before proceeding with the Trustee's Sale, the Kondaur Defendants
10 provided the Borrower with copies of (1) the McKinney Note; (2) the McKinney Trust Deed;;
11 and (3) the payment history on the McKinney Loan. [SOF ¶16] No further verification was
12 required, particularly considering that the Borrower acknowledges that he quit paying this debt.
13 Thus, there is simply no violation of the Fair Debt Collection Practices Act.

14 **VII. The Kondaur Defendants Are Not Liable for Intentional Infliction of Emotional Distress.**

15 Count IX of the Complaint alleges a claim for intentional infliction of emotional
16 distress. None of the conduct alleged in the complaint supports such a cause of action.

17 Under Arizona law:

18 The tort of intentional infliction of emotional distress requires
19 proof of three elements:

20 "[F]irst, the conduct by the defendant must be 'extreme' and
21 'outrageous'; second, the defendant must either intend to cause
22 emotional distress or recklessly disregard the near certainty that
23 such distress will result from his conduct; and third, severe
24 emotional distress must indeed occur as a result of defendant's
25 conduct."

26 *Citizen Publishing Co. v. Miller*, 210 Ariz. 513, ¶11, 115 P.3d 107, ¶11 (2005), *quoting Ford v. Revlon, Inc.*, 153 Ariz. 38, 43, 734 P.2d 580, 585 (1987). Whether the alleged acts are

1 sufficiently extreme and outrageous to support an emotional distress claim must be determined
2 by "the court in the first instance, as society's conscience." *Midas Muffler Shop v. Ellison*, 133
3 Ariz. 194, 197, 650 P.2d 496, 499 (App. 1982). And, in the case of a creditor's conduct in
4 collecting a debt, "the courts have uniformly insisted that the creditor's conduct be clearly and
5 obviously excessive in order to sustain a cause of action; 'liability usually has rested on a
6 prolonged course of hounding by a variety of extreme methods.'" *Id.* at 197-98, 650 P2d at
7 499-500, quoting W. Prosser, *The Law of Torts* § 12 at 57 (4th ed. 1971).

9 Had the Kondaur Defendants so desired, they could have foreclosed the Subject
10 Property on September 9, 2009, the original date of the Trustee's Sale. Instead, they repeatedly
11 postponed the Trustee's Sale in an effort to negotiate a resolution with the Borrower. [SOF ¶9]
12 Ultimately, the Kondaur Defendants offered to accept \$238,750 in satisfaction of the
13 McKinney Loan. [SOF ¶10] The Borrower rejected that offer and now contends that the
14 Kondaur Defendants' previous willingness to forgive more than \$160,000 of debt constitutes
15 intentional infliction of emotional distress. [SOF ¶10] The conduct of the Kondaur Defendants
16 in postponing the Trustee's Sale and negotiating with the Borrower simply cannot be
17 characterized as extreme, outrageous, excessive, or prolonged hounding. To conclude
18 otherwise, would be to adopt, as law, the maxim that no good deed goes unpunished.

20 **VIII. The Kondaur Defendants Are Not Liable for Fraud.**

21 Plaintiffs tenth cause of action makes non-specific allegations of fraud based on "certain
22 representations" that Plaintiffs claim were false. [See Complaint at ¶¶224-25] These generic
23 allegations fail to state a claim for fraud by the Kondaur Defendants and the evidence simply
24 does not support such a claim.
25
26

1 "[T]here can be no actionable fraud in this jurisdiction without a concurrence of all the
2 elements thereof." *Denbo v. Badger*, 18 Ariz. App. 426, 428, 503 P.2d 384, 386 (1972). "The
3 elements of common law fraud are a material, false representation, scienter, the fraudfeasor's
4 intent to induce reliance upon the misrepresentation, the fraud victim's ignorance of its falsity,
5 his actual, reasonable reliance, and his consequent and proximate injury." *Parks v. Macro-*
6 *Dynamics, Inc.*, 121 Ariz. 517, 520, 591 P.2d 1005, 1008 (App. 1979). Rule 9(b), Ariz. R. Civ.
7 P., requires a party alleging fraud to "state with particularity the circumstances constituting
8 fraud." Specifically, a plaintiff "must state the time, place, and specific content of the false
9 representations as well as the identities of the parties to the misrepresentation." *Schreiber*
10 *Distrib. Co. v. ServWell Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986); *see also A.G.*
11 *Edwards & Sons, Inc. v. Smith*, 736 F. Supp. 1030, 1033 (D. Ariz. 1989) ("mere conclusory
12 allegations of fraud will not suffice; the complaint must contain statements of the time, place,
13 and nature of the alleged fraudulent activities"); *Lancaster Cmty. Hosp. v. Antelope Valley*
14 *Dist.*, 940 F.2d 397, 405 (9th Cir. 1991) (averments of fraud must be accompanied by the who,
15 what, when, where, and how of the misconduct charged). Fraud "may never be established by
16 doubtful, vague, speculative, or inconclusive evidence." *Enyart v. Transamerica Ins. Co.*, 195
17 Ariz. 71, 77, 985 P.2d 556, 562 (App. 1998).

20 As noted above, Count X merely refers to "certain representations" without specifically
21 identifying them. While Count X incorporates previous allegations, none of those set forth any
22 particular representations of the Kondaur Defendants that Plaintiffs contend are false. Indeed,
23 Plaintiffs' chief issue with the Kondaur Defendants is an alleged failure to respond to a so-
24 called qualified written request or otherwise identify the holder of the McKinney Note.
25 However, as set forth above, the Kondaur did respond to the Borrower's letters, however
26

1 characterized, and specifically sent the Borrower a copy of the recorded McKinney Assignment
2 identifying Kondaur Capital as the assignee of M&I's beneficial interest under the McKinney
3 Trust Deed. Thus, despite the Borrower's feigned ignorance, the identity of the holder of the
4 McKinney Note has been revealed to the Borrower for quite some time. In short, there were no
5 false representations to support a claim for fraud.
6

7 Even if Plaintiffs had otherwise adequately stated a claim for fraud, it is difficult to
8 imagine how they have been injured by any conduct of the Kondaur Defendants. The Borrower
9 has lived in the house on the Subject Property, constructed with the proceeds of the McKinney
10 Loan, for more than a year without paying anything. The fact that this arrangement cannot
11 continue does not amount to an injury. It is merely the natural consequence of a debtor's failure
12 to honor his promise to pay his debt.
13

14 CONCLUSION

15 Plaintiffs, and the Borrower in particular, are not entitled to take more than \$400,000
16 for the construction of a house without repaying it. Yet that is exactly the object of this lawsuit.
17 Indeed, each cause of action alleged by Plaintiffs seeks to dismiss the Borrower's debt and
18 concomitant obligation to pay. Because there is no basis in fact or law for such a result,
19 Plaintiffs' Motion for Summary Judgment should be denied and summary judgment should be
20 entered in favor of the Kondaur Defendants and awarding the Kondaur Defendants their
21 ...
22 ...
23 ...
24 ...
25 ...
26 ...

1 reasonable costs and attorney's fees against each of the Plaintiffs. A.R.S. §§12-341.01 and 12-
2 349.

3 RESPECTFULLY SUBMITTED February 22, 2010.

4 *GUST ROSENFELD, P.L.C.*

5
6 By: /s/Robert M. Savage
7 Mark L. Collins
8 Robert M. Savage
9 *Attorneys for Kondaur Capital Corporation,*
10 *Kondaur Venture X, LLC, and Kondaur*
11 *Capital Trust Series 2009-3*

12 Original electronically filed and copy
13 mailed February 22, 2010 to:

14 Laura Sixkiller
15 GREENBERG TRAURIG, LLP
16 2375 E. Camelback Road, Ste 700
17 Phoenix, AZ 85016

18 Larry O. Folks
19 Kathleen Weber
20 FOLKS & O'CONNOR, PLLC
21 1850 N. Central Ave., Ste. 1140
22 Phoenix, AZ 85004

23 James McKinney
24 518 S. Wickiup Road
25 Apache Junction, AZ 85110

26 By: /s/Mary Ellen Shannon

EXHIBIT 6

RECEIVED

MAR 02 2010

LES

1 **GUST ROSENFELD P.L.C.**
One S. Church Ave., Suite 1900
2 Tucson, Arizona 85701-1627
Tel.: (520) 628-7070
3 Fax: (520) 624-3849

4 By: Mark L. Collins, SB #003929
(mcollins@gustlaw.com)
5 Robert M. Savage, SB #020662
(rsavage@gustlaw.com)
6

7 *Attorneys for Defendants Kondaur Capital Corporation,
Kondaur Venture X, LLC, and Kondaur Capital Trust Series 2009-3*
8

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **IN AND FOR THE COUNTY OF MARICOPA**

11 **JAMES McKINNEY**, an individual,
12 **JAMES McKINNEY**, an individual,

13 **Plaintiffs,**

14 **vs.**

15 **KONDAUR CAPITAL CORPORATION**,
a Delaware corporation; **KONDAUR**
16 **VENTURE X, LLC**, a Delaware LLC;
KONDAUR CAPITAL TRUST SERIES
2009-3, a Delaware statutory trust;
17 **DEUTSCHE BANK TRUST COMPANY**
DELAWARE, a Delaware corporation;
18 **PAULA CHASTAIN**, an individual;
PETER BAI, an individual; **FOLKS AND**
O'CONNOR, PLLC, an Arizona LLC;
19 **SECURITY TITLE AGENCY**, an Arizona
corporation; **M&I MARSHALL AND**
20 **ILSLEY BANK**, a Wisconsin corporation;
JOHN DOES and JANE DOES, husband
21 and wife; **JOHN DOES and JANE DOES I-**
X; ABC CORPORATIONS I-V; XYZ
22 **PARTNERSHIPS I-V; and ABC LLCs I-V;**
XYZ TRUSTS I-V,

23 **Defendants.**
24
25
26

No. CV2010-090122

KONDAUR DEFENDANTS'
SEPARATE STATEMENT OF FACTS
IN SUPPORT OF CONSOLIDATED
CROSS-MOTION FOR SUMMARY
JUDGMENT

AND

OPPOSITION TO PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT

(Hon. Karen Potts)

1 Pursuant to Rule 56, Ariz. R. Civ. P., the "Kondaur Defendants"¹ submit the following
2 statement of facts:

3
4 **STATEMENT OF FACTS**

5 1. In February 2007, the Borrower borrowed \$408,458.00 ("McKinney Loan")
6 from Defendant M & I Marshall & Ilsley Bank ("M&I") for the construction of a house on the
7 Subject Property. [Attachment A] The final settlement statement for the McKinney Loan
8 reflects total fees charged in connection with that loan of \$2,635.33 or 0.64% of the total loan
9 amount (\$2,635.33 ÷ \$408,458). [Attachment A at ¶¶2-4]

10 2. The McKinney Loan was evidenced by a Promissory Note signed by the
11 Borrower ("McKinney Note"). [Attachment B at Exhibit 2]

12 3. The McKinney Loan was secured by a deed of trust executed by the Borrower
13 ("McKinney Trust Deed") encumbering the Subject Property. [Attachment B at Exhibit 4]
14 M&I was the named beneficiary under the McKinney Trust Deed. [Id.]

15 4. Beginning in February 2009, the Borrower stopped making the payments
16 required by the McKinney Note. [Attachment A at ¶7]

17 5. As a result of the Borrower's default, Defendant Folks & O'Connor ("Folks"), in
18 its capacity as trustee under the McKinney Trust Deed, mailed and recorded a Notice of
19 Trustee's Sale ("Sale Notice") on June 3, 2009. [Attachment C at ¶3] The "Trustee's Sale" was
20 originally scheduled for September 9, 2009. [Attachment C at ¶ 3]
21
22
23
24

25
26 ¹ The Kondaur Defendants consist of Kondaur Capital Corporation, Kondaur Venture X, LLC, Kondaur
Capital Trust Series 2009-3, Paula Chastain, and Peter Bai.

1 6. On August 4, 2009, M&I assigned its interest in the McKinney Note and the
2 McKinney Trust Deed to Defendant Kondaur Capital Corp. ("Kondaur Capital") by an indorsed
3 allonge ("McKinney Allonge") and an Assignment of Deed of Trust ("McKinney Assignment")
4 recorded on September 2, 2009. [Attachment B at ¶2] The original McKinney Note and
5 McKinney Allonge are in the possession of Kondaur Capital. [Attachment B at ¶2]

6 7. The assignment of the McKinney Note and the McKinney Trust Deed was also
7 disclosed to the Borrower through a written Notice of Assignment mailed to him in July 2009.
8 [Attachment A at ¶9]

9 8. On August 8, 2009, the Borrower filed a lawsuit in Pinal County Superior Court
10 ("Pinal Lawsuit") seeking to stop the Trustee's Sale. [Attachment B at ¶7]

11 9. Although the Borrower's request for a temporary restraining order was denied in
12 the Pinal Lawsuit, Kondaur Capital voluntarily and repeatedly postponed the Trustee's Sale to
13 facilitate settlement discussions. [Attachment B at ¶8; Attachment D]

14 10. The Kondaur Defendants offered to accept \$238,750 in satisfaction of the
15 McKinney Loan. [Attachment A at ¶10] The Borrower rejected that offer. [Id.]

16 11. On August 17, 2009, the Kondaur Defendants received from the Borrower
17 written correspondence titled "Written Notice of Loan Dispute" ("Dispute Notice").
18 [Attachment A at ¶12]

19 12. The Kondaur Defendants responded in writing to the Dispute Notice on August
20 18, 2009 informing the Borrower that, *inter alia*, the "security interest in your property remains
21 intact and is fully enforceable." [Attachment A at ¶13]

22 13. Subsequently, the Kondaur Defendants received from the Borrower written
23 correspondence dated August 18, 2009 and titled "Notice of Loan Rescission" ("Rescission
24
25
26

1 Notice"). [Attachment A at ¶14]

2 14. On August 24, 2009, the Kondaur Defendants responded in writing to the
3 Rescission Notice informing the Borrower that: "[T]he right to rescind does not apply to 'a
4 residential mortgage transaction' pursuant to Regulation Z § 226.23(f)(1). A 'residential
5 mortgage transaction' is defined by the Truth in Lending Act in 15 U.S.C. § 1602(w) as a
6 transaction in which 'a security interest . . . is created . . . to finance the acquisition or initial
7 construction of . . . [a] . . . dwelling.'" [Attachment A at ¶15]

9 15. On August 20, 2009, the Kondaur Defendants received from the Borrower
10 written correspondence titled "Qualified Written Request, Complaint, Dispute of Debt and
11 Validation of Debt Letter, TILA Request" ("Servicing Request"). [Attachment A at ¶16] The
12 Servicing Request was twenty-one pages long and contained almost two-hundred questions
13 almost none of which had to do with the servicing of the McKinney Loan. [Id.]

14 16. On September 21, 2009 the Kondaur Defendants in writing to the Servicing
15 Request and provided the Borrower with true and accurate copies of: (1) the McKinney Note;
16 (2) the McKinney Trust Deed; (3) the payment history on the McKinney Loan; (4) the Final
17 Settlement Statement generated when the McKinney Loan was funded; (5) and the written
18 notices sent to Borrower informing him that the McKinney Loan had been assigned to Kondaur
19 Capital. [Attachment A at ¶17]

21 17. The last voluntary postponement of the Trustee's Sale occurred on December 15,
22 2009, at which time the Trustee's Sale was rescheduled for January 5, 2010 at 9:05 AM.
23 [Attachment B at ¶8; Attachment C at ¶5] Although the Trustee's Sale was held on that date, a
24 trustee's deed has not yet been recorded. [Attachment C at ¶7]

26 18. On December 26, 2009, the Kondaur Defendants received written

1 correspondence from the Borrower dated December 24, 2009 ("December Letter") in which the
2 Borrower claimed to "have grave doubts to whom I am dealing with [sic]" and demanded to
3 negotiate with the "Real Part in Interest." Attachment A at ¶18]

4 19. On January 4, 2010, the Kondaur Defendants responded in writing to the
5 December Letter informing Borrower, *inter alia*, that: "As you are very well aware , you have
6 been working with Kondaur, the current Note Holder, for the last six (or more) months in order
7 to resolve the delinquency of your mortgage." [Attachment A at ¶19] Included with the
8 Kondaur Defendants' written response to the December Letter were copies of: (1) the recorded
9 McKinney Assignment; (2) the Dispute Notice; (3) the Kondaur Defendants' response to the
10 Dispute Notice; (4) the Servicing Request; and (5) the Kondaur Defendants' response to the
11 Servicing Request, including all attachments thereto. [Id.]
12

13 RESPECTFULLY SUBMITTED February 22, 2010.

14 *GUST ROSENFELD, P.L.C.*

15
16 By: /s/Robert M. Savage
17 Mark L. Collins
18 Robert M. Savage
19 *Attorneys for Kondaur Capital Corporation,*
20 *Kondaur Venture X, LLC, and Kondaur*
21 *Capital Trust Series 2009-3*

22 Original electronically filed and copy
23 mailed February 22, 2010 to:

24 Laura Sixkiller
25 GREENBERG TRAURIG, LLP
26 2375 E. Camelback Road, Ste 700
Phoenix, AZ 85016

1 Larry O. Folks
Kathleen Weber
2 FOLKS & O'CONNOR, PLLC
1850 N. Central Ave., Ste. 1140
3 Phoenix, AZ 85004
4 James McKinney
5 518 S. Wickiup Road
Apache Junction, AZ 85110
6
7 By: /s/Mary Ellen Shannon
8
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- 1 Attachment List:
- 2 A. Chastain Declaration
- 3 B. Corrected Declaration of Peter Bai
- 4 C. Folks Declaration
- 5 D. Denial of TRO
- 6
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Exhibit 1

When recorded mail to:

Larry O. Folks
C/O FOLKS & O'CONNOR, PLLC
Suite 1140
1850 N. Central Ave.
Phoenix, AZ 85004

Recorded 6-5-09
2009-057606
PINAL County, Arizona

NOTICE OF SUBSTITUTION OF TRUSTEE

14-83463

The undersigned BENEFICIARY hereby appoints Larry O. Folks, a member of the State Bar of Arizona, of FOLKS & O'CONNOR, PLLC, Suite 1140, 1850 N. Central Ave., Phoenix, AZ 85004 (Telephone # 602 262-2265) as Successor Trustee, under that certain Deed of Trust executed by James H McKinney, an unmarried man, as TRUSTOR(S), in which Chicago Title Insurance Company 2500 S Power Rd STE 101 Mesa, AZ 85209 is named as the TRUSTEE, and M & I Marshall & Ilsley Bank is named as the BENEFICIARY, which said Deed of Trust is dated February 7, 2007 and recorded on February 2, 2007 in Instrument Number 2007-017572, in Pinal County Arizona and legally describing the trust property as:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

THE SUCCESSOR TRUSTEE APPOINTED HEREIN QUALIFIES AS A TRUSTEE OF THE TRUST DEED IN THE TRUSTEE'S CAPACITY AS a member of the State Bar of Arizona AS REQUIRED BY ARIZONA REVISED STATUTES SECTION 33-803, SUBSECTION A.

Dated this 4th day of June, 2009

M & I Marshall & Ilsley Bank

STATE OF ARIZONA

County of Maricopa

SS.

By Larry O. Folks
Attorney at Law

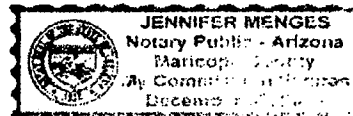
By Special Power of Attorney

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 4th day of June, 2009 by Larry O. Folks, Attorney at Law, By Special Power of Attorney for M & I Marshall & Ilsley Bank on behalf of said corporation.

My commission expires _____

Notary Public

TS No. McKinney, James H
Loan No. 098-00035662154-40000



McKinney, James

EXHIBIT "A"- Legal Description

Parcel A. of record of survey, recorded in book 17 of surveys, page 041 and book 17 of surveys, page 205, records of Pinal County, Arizona being the north half of the northeast quarter of the southeast quarter of the southwest quarter of the southwest quarter of section 22, township 1 north, range 8 east, of the Gila and Salt River Base and Meridian, Pinal County, Arizona; except all the coal, oil, gas and other mineral deposits as reserved unto the United States of American in the patent to said land.

SECURITY TITLE AGENCY

When recorded return to:

Larry O. Folks
FOLKS & O'CONNOR, PLLC
Suite 1140
1850 N. Central Ave.
Phoenix, AZ 85004

Recorded 6-5-09
2009-057607
PINAL County, Arizona

NOTICE OF TRUSTEE'S SALE

~~14-83463~~

Trustee Sale No: **McKinney, James H** Recorded: **June 5, 2009**
Loan Number: **098-00035662154-40000**

The following legally described trust property will be sold, pursuant to the power of sale under that certain Trust Deed dated February 7, 2007, and recorded on February 9, 2007 in Instrument Number 2007-017572. Records of Pinal County, Arizona at public auction to the highest bidder at the main entrance to the Pinal County Superior Court Building, 971 North Jason Lopez Circle, Bldg A, Florence, AZ on September 9, 2009 at 9:05AM of said day.

LEGAL

Parcel A, of record of survey, recorded in book 17 of surveys, page 041 and book 17 of surveys, page 205, records of Pinal County, Arizona being the north half of the northeast quarter of the southeast quarter of the southwest quarter of the southwest quarter of section 22, township 1 north, range 8 east, of the Gila and Salt River Base and Meridian, Pinal County, Arizona; except all the coal, oil, gas and other mineral deposits as reserved unto the United States of American in the patent to said land.

The street address is purported to be:

Parcel # 103-04-057A
Apache Junction, AZ 85219

Tax Parcel Number 103-04-057A
Original Principal Balance \$ 408,458.00

NAME AND ADDRESS OF

Original Trustor

James H McKinney, an unmarried man
618 South Wickiup
Apache Junction, AZ 85219

Current Owner

James H McKinney, an unmarried man
618 South Wickiup
Apache Junction, AZ 85219

Beneficiary

M & I Marshall & Isley Bank
770 North Water Street
Milwaukee, WI 53202

Current Trustee
Larry O. Folks
Suite 1140
1850 N. Central Ave.
Phoenix, AZ 85004

Telephone Number: 602-262-2265
Sales Line: 480-507-1135

Dated June 3, 2009

Signature of Trustee



Larry O. Folks

MANNER OF TRUSTEE QUALIFICATION
a member of the State Bar of Arizona, as required by
A.R.S. Sec. 33-803, Subsection A(2)
Trustee's Regulator: State Bar of Arizona

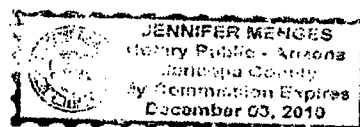
STATE OF ARIZONA }
 } ss.
County of MARICOPA :

On June 3, 2009, before me, the undersigned notary public, personally appeared Larry O. Folks, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

My commission expires December 3, 2010



Jennifer Menges
NOTARY PUBLIC

All persons whose interest in the Trust Property is subordinate in priority to that of the above described Deed of Trust may be subject to having such subordinate interest terminated by this Trustee's Sale.

The notice contained in this Statement is or may be an attempt to collect a debt, and any information obtained will be used for that purpose.

STATEMENT OF BREACH OR NON-PERFORMANCE

The following Breach or Non-Performance of that certain Deed of Trust recorded under the Trust Deed executed by James H McKinney, an unmarried man, as Trustor(s), in which Chicago Title Insurance Company 2500 S Power Rd STE 101 Mesa, AZ 85209 is named as Trustee, which Trust Deed dated February 7, 2007, and recorded in Pinal County, Arizona, in Instrument Number 2007-017572, (the "Deed of Trust") has occurred:

Failure to make the monthly installment due in the amount of \$2375.76, which became due on 2/01/2009 and all subsequent installments thereafter, along with all costs and fees, together with all other defaults under the Deed of Trust.

The beneficiary in said Deed of Trust has elected to sell or cause to be sold the property described in said Deed of Trust at a Trustee's Sale in compliance with ARS 33-801 ET. SEQ.

The amount of the unpaid principal balance ("the debt" is \$40,500 to plus interest accruing from the date last paid. The creditor to whom the debt is paid is M & I Marshall & Ilsley Bank. Unless the Debtor notifies the Trustee who is mailing this Notice within 30 days of receiving this notice that they dispute the validity of the debt, or any portion thereof, the Trustee will assume the debt is valid. If the Debtor notifies the trustee in writing within the 30 day period that the debt, or any portion thereof is disputed, the Trustee will obtain a verification of the debt and a copy of such verification will be mailed to the Debtor. If the Creditor named above is not the original Creditor, and if the Debtor makes a written request to the Trustee within 30 days from receipt of this notice, the name and address of the original Creditor will be mailed to the Debtor by this office.

M & I Marshall & Ilsley Bank

By  Larry O. Folks

Attorney at Law

By Special Power of Attorney
Pursuant to A.R.S. 33-809(C)

IF YOUR INTEREST IN THE SUBJECT PROPERTY IS JUNIOR AND INFERIOR TO THAT OF THE TRUST DEED BEING FORECLOSED, YOUR INTEREST IN THE TRUST PROPERTY WILL BE TERMINATED BY THE TRUSTEE'S SALE

TS No. McKinney, James H
Loan No. 098-00035662154-40000

Exhibit 2

FILED PINAL COUNTY
SUPERIOR COURT
KRISTI YOUTSEY RUIZ CLERK

OCT 19 2009

1 Larry O. Folks, #012142
2 Kathleen A. Weber, #016076
3 FOLKS & O'CONNOR, PLLC
4 1850 N. Central Ave, #1140
5 Phoenix, Arizona 85004
6 (602) 515-0129
7 (weber@folksconnor.com)
8 *Attorneys for Defendant Folks &*
9 *O'Connor, PLLC*

10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **IN AND FOR THE COUNTY OF PINAL**

12 JAMES MCKINNEY, an individual,
13
14 Plaintiff,

Case No.: CV200903764

15 vs.

**MOTION TO DISMISS BY
DEFENDANT FOLKS &
O'CONNOR, PLLC**

16 KONDAUR CAPITAL
17 CORPORATION, a Delaware
18 corporation; et al.,

(Hon. William J. O'Neil)

19 Defendants.

20 Defendant Folks & O'Connor, PLLC ("Folks & O'Connor") hereby moves the
21 Court to dismiss the Complaint against it filed by Plaintiff James McKinney
22 ("Plaintiff"), pursuant to Rule 12(b)(6) of the Arizona Rules of Civil Procedure on the
23 grounds that the claims: (i) are barred by A.R.S. § 33-807(E); (ii) lack sufficient facts to
24 state the claim in violation of Rule 12(b)(6), Ariz.R.Civ.P., as interpreted by *Bell*
25 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 1965 (2007); (iii) fail to
26 comply with Rule 8(a) Ariz.R.Civ.P.; and (iv) fail to satisfy the heightened pleading
standard applicable to fraud allegations under Rule 9(b), Ariz.R.Civ.P. This Motion to
Dismiss is submitted pursuant Ariz.R.Civ.P. 7.1 and is supported by the following
Memorandum of Points and Authorities which is incorporated herein by this reference.

FOLKS & O'CONNOR, PLLC
1850 NORTH CENTRAL AVE, SUITE 1140
PHOENIX, ARIZONA 85004
(602) 262-2265

FOLKS & O'CONNOR, PLLC
1850 NORTH CENTRAL AVE, SUITE 1140
PHOENIX, ARIZONA 85004
(602) 262-2265

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS ALLEGED IN THE COMPLAINT

On August 8, 2009, Plaintiff filed the Complaint commencing this action, Pinal County Superior Court Case No. CV200903764 (this "Action"). Plaintiffs assert the following twelve causes of action against all defendants, including Folks & O'Connor: Breach of Contract; Violation of Arizona Consumer Fraud Act ("ACFA"); Violation of the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.* ("TILA"); Violation of Home Ownership and Equity Protection Act, 15 U.S.C. § 1639 ("HOEPA"); Quiet Title under A.R.S. § 12-1102 *et seq.*; (vi) Violation of the Fair Debt Collections Practices Act ("FDCPA"); Violation of the Arizona Assignment and Satisfaction of Mortgage Law and Invalid Deed of Trust Law under A.R.S. § 33-420 *et seq.*; Infliction of Emotional Distress; Fraud-Misrepresentation and Conspiracy; Conversion/ Civil Theft; Violation of the Uniform Commercial Code under A.R.S. § 47-3100 *et seq.* and Arizona's Recording Statute; and Civil RICO under 18 U.S.C. § 1961-1968 ("RICO").

The following is a summary of the allegations of the Complaint, which are assumed to be true solely for the purpose of this Motion. On February 7, 2007, Plaintiff obtained a loan in the amount of \$408,458.00 (the "Loan") from Defendant M&I Marshall and Ilsley Bank ("M&I"). Compl. ¶¶ 23-24. The Loan was secured by certain property located in Apache Junction, Arizona (the "Property") as evidenced by a Deed of Trust dated February 7, 2007 (the "Deed of Trust"). *Id.* Plaintiff alleges that by letter dated June 4, 2009 he rescinded a portion of the Loan pursuant to TILA. Compl. ¶ 38. On June 5, 2009, a Notice of Trustee's Sale was recorded to commence a non-judicial foreclosure of the Property. Compl. ¶ 83. In July 2009, Kondaur Capital Corporation ("KCC") assumed the Loan. Compl. ¶ 59. On August 17, 2007, Plaintiff sent KCC a

1 letter disputing the Loan debt and requesting verification of the debt. Compl. ¶¶ 91 and
2 137.¹

3 The only factual allegation specifically against Folks & O'Connor is that on June
4 5, 2009, Folks & O'Connor recorded the Notice of Trustee Sale. Compl. ¶ 83. Based
5 upon this, Plaintiff alleges Folks & O'Connor: (i) breached their "Trusteeship"; (ii)
6 conspired with M&I with the non-judicial foreclosure; (iii) lacks clean hands; and (iv) is
7 in breach. Compl. ¶¶ 44-48, 83. While these allegations are made in the body of the
8 Complaint, no specific cause of action is asserted against Folks & O'Connor for acting
9 as trustee.

10 The only cause of action specifically naming Folks & O'Connor is Count VII
11 regarding the FDCPA. Compl. ¶¶ 86-87, 134 and 141. Count VII asserts all of the
12 defendants violated FDCPA because Plaintiff sent KCC the August 17, 2009 letter and
13 KCC, Folks & O'Connor and M&I "failed and refused to stop collection of the debt."
14 See Exhibit I; Compl. ¶¶ 91 and 137-143. There is no allegation that the August 17,
15 2009 letter or any other communication was sent to Folks & O'Connor under 15 U.S.C.
16 § 809(b) to which Folks & O'Connor was obligated to respond under the FDCPA.
17 Based upon all of these alleged facts, Plaintiff's Complaint asserts twelve causes of
18 action against all of the defendants, including Folks & O'Connor. Compl. ¶¶ 92-199.

19
20
21 ¹ Generally, the court may not consider any material beyond the pleadings in ruling on a
22 Rule 12(b)(6) motion. *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542,
23 1555 n. 19 (9th Cir. 1990); *Lee v. City of L.A.*, 250 F.3d 668, 688 (9th Cir. 2001).
24 However, "material which is properly submitted as part of the complaint may be
25 considered on a motion to dismiss." *Branch v. Tunnell*, 14 F.3d 449, 453 (9th Cir.
26 1994), *cert. denied*, 512 U.S. 1219 (1994)(quoting *Hal Roach Studios*, 896 F.2d at 1555
n. 19), *overruled on other grounds*, *Galbraith v. County of Santa Clara*, 307 F.3d 1119
(9th Cir. 2002). Here, the Complaint attaches the Deed of Trust, Notice of Trustee's
Sale, and August 17, 2009 letter from Plaintiff to KCC, as Exhibits A, H and I, making
them part of the Complaint and fairly considered as part of this Motion to Dismiss.

II. LEGAL ANALYSIS

A. Standard for Motion to Dismiss

Rule 12(b)(6) permits dismissal of a claim either where that claim lacks a cognizable legal theory, or where insufficient facts are alleged to support the plaintiff's theory. *Balistreri v. Pacifica Police Dept.* 901 F.2d 696, 699 (9th Cir. 1988). In resolving a Rule 12(b)(6) motion, the district court must construe the complaint in the light most favorable to the plaintiff and accept all well-pleaded factual allegations as true. *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996).

In order to survive a Rule 12(b)(6) motion, a complaint must allege "more than labels and conclusions and a formulaic recitation of the elements of a cause of action[.]" *Twombly*, 127 S.Ct. at 1964; *Clemens v. Daimler Chrysler Corp.*, 534 F.3d 1017, 1022 (9th Cir. 2008)("To avoid a Rule 12(b)(6) dismissal, a complaint need not contain detailed factual allegations; rather it must plead 'enough facts to state a claim to relief that is plausible on its face[.]' quoting *Twombly*). A complaint must contain factual allegations sufficient "to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true even if doubtful in fact." *Twombly* 127 S.Ct. at 1965. "The pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action." *Id.*, (quoting 5 C. Wright & A. Miller, *Federal Practice and Procedure* § 1216, pp. 235-36 (3d ed. 2004)); *Yadin Company, Inc. v. City of Peoria*, 2008 WL 906730, * 4 (D. Ariz. 2008)("The Supreme Court also explained that Rule 8 requires a 'showing,' rather than a blanket assertion, of entitlement to relief.") (internal quotation marks omitted). The heightened standard set in *Twombly* was to prevent unnecessary and expensive pretrial discovery just to demonstrate the groundlessness of a plaintiff's case in complex litigation. *Id.*

1 **B. Folks & O'Connor has been improperly joined as a party**

2 Dismissal is appropriate pursuant to the Rule 12(b)(6) standards set forth above
3 because Folks & O'Connor is not amenable to suit based on the mere fact that Folks &
4 O'Connor acted as trustee to sell Plaintiff's property. Pursuant to A.R.S. § 33-807(E), a
5 trustee named as a defendant solely because of its role in the trustee's sale must be
6 "immediately dismissed" and recover its costs and reasonable attorneys' fees for being
7 improperly joined. Section 33-807(E) reads in full as follows:

8 The trustee [of a Deed of Trust] need only be joined as a party in legal
9 actions pertaining to a breach of the trustee's obligations under this chapter
10 or under the deed of trust. Any order of the court entered against he
11 beneficiary is binding upon the trustee with respect to actions that the
12 trustee is authorized to take by the trust deed or by this chapter. *If the*
13 *trustee is joined as a party in any other action, the trustee is entitled to be*
14 *immediately dismissed and to recover costs and reasonable attorneys fees*
15 *from the person joining the trustee.*

16 A.R.S. § 33-807(E) (emphasis added).

17 The quoted language above provides Folks & O'Connor the express and
18 unambiguous right to dismissal. Plaintiff's causes of action range from breach of
19 contract to RICO but not one asserts a claim against Folks & O'Connor as trustee. A
20 trustee's obligations relate to administration of the trustee's sale. For example, the
21 trustee must give notice of the trustee's sale (A.R.S. § 33-808), execute and deliver the
22 trustee's deed to the purchaser (A.R.S. § 33-811), and dispose of sale proceeds in
23 particular priority (A.R.S. § 33-812). A trustee has no obligations with respect to the
24 loan disclosures that Plaintiff alleges in the Complaint.

25 Here, the only substantive allegation in the entire Complaint that references
26 Folks & O'Connor is Count VII regarding the FDCPA. Count VII asserts all defendants
violated FDCPA because: (i) Plaintiff is a consumer; (ii) KCC sent Plaintiff a letter July
31, 2009 regarding the assignment; (iii) Plaintiff sent KCC a letter August 17, 2009

1 disputing the Loan debt and asking for verification of the debt; (iv) KCC and Folks &
2 O'Connor didn't take "proper action"; and (v) KCC, Folks & O'Connor and M&I
3 "failed and refused to stop collection of the debt." However, there is no allegation that
4 Folks & O'Connor was acting in any role other its role as trustee for the purposes of the
5 non-judicial trustee's sale. In addition, Plaintiff also alleges he only sent the August 17,
6 2009 letter to KCC requesting verification of the debt. Compl. ¶¶ 91 and 135-143, and
7 Exhibit I. There is no allegation that this or any other communication was sent to Folks
8 & O'Connor under 15 U.S.C. § 809(b) to which Folks & O'Connor was obligated to
9 respond under the FDCPA.

10 The Complaint shows that Plaintiff alone violated A.R.S. § 33-807(E) and that
11 Folks & O'Connor is an impermissible defendant. Accordingly, as contemplated by
12 statute, the Court should grant this Motion to Dismiss and award Folks & O'Connor its
13 fees and costs.

14 **C. Each cause of action against Folks & O'Connor must be dismissed**

15 **1. Count I: Breach of Contract**

16 In an action on a contract, a plaintiff must establish the existence of a contract, its
17 breach, and damages resulting from the breach. *See Thunderbird Metallurgical, Inc. v.*
18 *Arizona Test Lab*, 5 Ariz.App. 48; 423 P.2d 124 (App. 1967). Here, Plaintiff fails to
19 allege any contract exists between Plaintiff and Folks & O'Connor, how Folks &
20 O'Connor breached a contract with Plaintiff and what damages resulted. In sum,
21 Plaintiff failed to plead any elements of a breach of contract cause of action against
22 Folks & O'Connor and failed to comply with Rule 8(a). Therefore, Count I against
23 Folks & O'Connor must be dismissed.

1 2. **Count II: Violation of ACFA**

2 Plaintiff claims all of the defendants violated ACFA by making representations
3 to Plaintiff "with the intent and purpose of inducing Plaintiff into signing an agreement
4 for refinancing and did not provide the appropriate closing documents required by
5 Arizona and Federal Law." Compl. ¶ 98. Count II conspicuously fails to specifically
6 state Folks & O'Connor did anything fraudulent. Rather, the claim appears to be
7 directed solely at a party inducing Plaintiff to enter into the Loan. Indeed, Plaintiff's
8 ACFA claim fails on its face because it is woefully inadequate on the specifics required
9 under Ariz.R.Civ.P. Rule 9(b) which include stating the "who, what, where, when and
10 how" the allegedly fraudulent conduct. *Vess v. Ciba-Geigy Corp., USA*, 317 F.3d 1097,
11 1106 (9th Cir. 2003). Since Count II of the Complaint fails to comply with Rules 8(a)
12 and 9(b), the Complaint fails to state a fraud claim upon which relief may be granted
13 and must be dismissed as against Folks & O'Connor.

14 3. **Count III: Violation of TILA**

15 Plaintiff alleges in a conclusory fashion that Folks & O'Connor violated TILA.
16 TILA requires certain disclosures be made in connection with extending credit. 15
17 U.S.C. §§ 1601, *et seq.* The term "creditor," however, is defined by TILA as a "person
18 to whom the debt arising from the consumer credit transaction is *initially payable on*
19 *the face o the evidence of the indebtedness . . .*" 15 U.S.C. § 1602(f)(1), (2) (emphasis
20 added). Folks & O'Connor is not a person or entity to whom the obligation is payable
21 on the face of the Note as referenced in the Deed of Trust attached to the Complaint as
22 Exhibit A. In addition, there is no allegation or even a suggestion in the Complaint that
23 Folks & O'Connor is a "creditor" or "assignee" within the TILA definition at any time
24 during the Loan transaction. Indeed, as a trustee, Folks & O'Connor is not a "creditor"
25 or "assignee" under TILA. Amendment of the Complaint to assert violations of TILA
26 would be futile. So the TILA claim should be dismissed with prejudice. *Castro v.*

1 *Executive Trustee Services, LLC*, Case No. 2:08-CV-02156-PHX-LOA at page 14 (Feb.
2 23, 2009)(foreclosure trustee not "creditor" under HOEPA and TILA).

3 In addition, TILA claims are not valid defenses to a foreclosure action. *See, e.g.,*
4 *Bank of New York v. Conway*, 916 A.2d 130, 139 (Conn. Supp. 2006) ("failure to
5 comply with state and/or federal truth-in-lending requirements has been held not to
6 constitute a legally sufficient special defense in mortgage foreclosure actions");
7 *Grandway Credit Corp. v. Brown*, 295 So.2d 714, 714 (Fla. Dist. Ct. App. 1974)
8 ("Further, we note that the Truth and Lending statute provides for its own penalties
9 upon violation thereof (15 U.S.C.A. § 1640) and does not affect the validity or
10 enforceability of valid legal obligations"); *First Citizens Bank & Trust Co. of S.C. v.*
11 *Owings*, 259 S.E.2d 747 (Ga. Ct. App. 1989) ("A violation of the Truth in Lending Act
12 would therefore constitute no defense to the foreclosure proceedings."); *Fleet Real*
13 *Estate Funding Corp. v. Smith*, 530 A.2d 919, 915 (Pa. Super. Ct. 1987) ("Therefore, a
14 set-off for an alleged violation of the Truth-in-Lending Act cannot be asserted as a
15 counterclaim in a mortgage foreclosure action."). Here, Plaintiff asserted a TILA claim
16 to prevent the foreclosure sale. However, Count III of the Complaint is not supported
17 by TILA.

18 Furthermore, the statute of limitation for TILA claims is one year after a loan
19 closes. 15 U.S.C. § 1640(e). A damages claim under TILA accrues, at the latest, when
20 the loan documents were signed. *Conway*, 916 A.2d at 139; *Meyer v. Ameriquest*
21 *Mortgage Company*, 342 F.3d 899, 902 (9th Cir. 2003); *Katz v. Bank of California*, 640
22 F.2d 1024, 1025 (9th Cir. 1981). Here, the Loan was made on February 7, 2007, so
23 Defendant's TILA claim had to be brought by February 7, 2008, over 18 months before
24 the Complaint was filed. Thus, the TILA claim is barred by 15 U.S.C. § 1640(e). For
25 all of these reasons, Count III against Folks & O'Connor must be dismissed.
26

1 4. Count IV: Violation of HOEPA

2 Count IV of the Complaint asserts a cause of action against all of the defendants
3 for violation of HOEPA. However, HOEPA provides no independent cause of action.
4 HOEPA augments TILA with additional disclosure obligations and substantive
5 requirements for particular high-cost mortgages. See 15 U.S.C. § 1639. Not every loan
6 is subject to HOEPA. 15 U.S.C. § 1602(aa)(1). To state a claim for violation of TILA
7 based on HOEPA's additional disclosure requirements, Plaintiff "must allege facts
8 supporting a conclusion that HOEPA applies to the loan at issue." *Marks v. Chicoine*,
9 2007WL1056779 at *7-8 (N.D. Cal. Apr. 6, 2007) (dismissing HOEPA claim); see also
10 *Emory v. Wells Fargo Bank, N.A.*, Case No. 2:05-CV-01485-PHX-NVW, 2006 U.S.
11 Dist. LEXIS 6817, at *17-18 (D. Ariz. Feb. 16, 2006) (granting summary judgment for
12 defendant where plaintiff failed to adequately allege that his loan was subject to
13 HOEPA). Because Plaintiff does not allege facts supporting the application of HOEPA
14 to the Loan, this claim must be dismissed.

15 Even if the Court were to conclude that HOEPA applied to the Loan, from the
16 face of Plaintiff's Complaint, it appears Plaintiff's action for violation of HOEPA is
17 barred by the statute of limitations. An action for damages under HOEPA must be
18 brought within one year of the violation. 15 U.S.C. § 1640(e); 12 C.F.R. § 226.23;
19 *Wherry v. All California Funding*, 2006 WL 2038495, *2 (N.D. Cal. 2006) (citing *In re*
20 *Community Bank of Northern Virginia*, 418 F.3d 277, 305 (3rd Cir. 2005)). Here, the
21 Complaint was filed more than 2½ years after the alleged violations of HOEPA.

22 And, even if HOEPA *did* apply to this case, Plaintiff offers no clues as to how or
23 why they believe Folks & O'Connor could be liable for any breach of HOEPA by any
24 other defendant. Therefore, the Complaint fails to state a claim against Folks &
25 O'Connor for any violation of HOEPA, and this claim must be dismissed pursuant to
26 Rule 12(b)(6).

1 **5. Count V: Quiet Title**

2 Plaintiff's Count V asserts a claim for quiet title against all defendants. Compl.
3 ¶¶ 123-132. Plaintiff alleges that the "Defendants" allege they are the holder and owner
4 of the Promissory Note and Deed of Trust on the Property but that "No Defendant
5 whatsoever is a Holder in Due Course in the transaction." There are no specific
6 allegations about Folks & O'Connor's claims to the Property and the exhibits to the
7 Complaint do not support such a claim. Plaintiff's failure to specify claims against Folks
8 & O'Connor violates Rule 8(a); therefore, Count V should be dismissed.

9 **6. Count VII: Violation of FDCPA²**

10 Count VII asserts the defendants violated FDCPA because: (i) Plaintiff is a
11 consumer; (ii) KCC sent Plaintiff a letter July 31, 2009 regarding the assignment; (iii)
12 Plaintiff sent KCC a letter August 17, 2009 disputing the Loan debt and asking for
13 verification of the debt; (iv) KCC and Folks & O'Connor didn't take "proper action";
14 and (v) KCC, Folks & O'Connor and M&I "failed and refused to stop collection of the
15 debt." Here, there is no allegation that Folks & O'Connor was acting in any role other
16 its role as trustee for the purposes of the non-judicial trustee's sale. Plaintiff also alleges
17 he only sent the August 17, 2009 letter to KCC requesting verification of the debt.
18 Compl. ¶¶ 91 and 137, and Exhibit I. There is no allegation that this or any other
19 communication was sent to Folks & O'Connor under 15 U.S.C. § 809(b) to which Folks
20 & O'Connor was obligated to respond under the FDCPA. For all of these reasons, the
21 FDCPA claim must be dismissed as against Folks & O'Connor.

22 **7. Count VIII: Violation of Arizona Assignment and Satisfaction**
23 **of Mortgage Law**

24 Count VIII appears to assert a claim under A.R.S. § 33-420(A) that false
25 documents were recorded after Plaintiff "rescinded" the loan documents under TILA §
26

² Plaintiff's Complaint skips Count VI and labels the sixth cause of action as Count VII.

1 1635 and "voided" the Deed of Trust. The Court's August 9, 2009 Minute Entry found
2 there was no rescission. However, even if there was a rescission, Plaintiff has not stated
3 any claim against Folks & O'Connor in compliance with Rule 8(a). As such, Count VIII
4 should be dismissed for failure to state a claim for which relief may be granted.

5 **8. Count IX: Infliction of Emotional Distress**

6 The elements of a cause of action for intentional infliction of emotional distress
7 ("IIED") are:

8 *[F]irst* the conduct by the defendant must be "extreme" and "outrageous";
9 *second*, the defendant must either intend to cause emotional distress or
10 recklessly disregard the near certainty that such distress will result from his
11 conduct; and *third*, severe emotional distress must indeed occur as a result
12 of defendant's conduct.

13 *Ford v. Revlon, Inc.*, 153 Ariz. 38, 43, 734 P.2d 580, 585 (1987) (citing Restatement
14 (Second) of Torts § 46(1) (1965) (emphasis in original).

15 The trial court determines whether the acts at issue are sufficiently outrageous to
16 state a claim for relief; however if reasonable minds could differ about whether the
17 conduct is sufficiently outrageous, the issue should be decided by a jury. *Mintz v. Bell*
18 *Atlantic Sys. Learning Int'l, Inc.*, 183 Ariz. 550, 554, 905 P.2d 559, 563 (App. 1995).
19 To recover for the this tort, the plaintiff must show that the defendants conduct was "so
20 outrageous in character, and so extreme in degree, as to go beyond all possible bounds
21 of decency, and to be regarded as atrocious and utterly intolerable in a civilized
22 community." *Cluff v. Farmers Ins. Exchange*, 10 Ariz. App. 560, 562, 460 P.2d 666,
23 668 (1969) (quoting Restatement (Second) of Torts § 46 cmt. d).

24 Relevant factors for the court to determining what is "outrageous" include: (i) the
25 defendant's knowledge that plaintiff is particularly susceptible to emotional distress; (ii)
26 whether defendant's conduct was privileged or defendant had a legitimate business

1 purpose for its conduct; and (iii) whether defendant abused a position or relationship
2 with plaintiff. *Mintz*; Restatement (Second) of Torts §§ 46 comments e, f and g (1965).

3 The alleged conduct at issue here is not so outrageous that it goes beyond all
4 bounds of decency. There is no allegation or basis to allege that Plaintiff was
5 susceptible to emotional distress or that Folks & O'Connor was aware that. In addition,
6 as shown by the Notice of Trustee's Sale attached to the Complaint, Folks & O'Connor
7 acted solely as trustee for a non-judicial foreclosure and had a legitimate business
8 purpose for its conduct. Furthermore, there is no allegation or basis to allege that Folks
9 & O'Connor had a special relationship with Plaintiff that it abused. But most important,
10 regardless of the truth of Plaintiff's allegations about Folks & O'Connor, Folks &
11 O'Connor's alleged conduct does not rise to the level of "outrageous" and "extreme" to
12 justify a claim for IIED. *See, e.g. Mintz*, 183 Ariz. at 554-55, 905 P.2d at 563-64 (trial
13 court properly dismissed IIED claim alleging failure to promote motivated by sex
14 discrimination or retaliation—while conduct appeared callous and insensitive, it was not
15 sufficiently extreme and outrageous to state a claim for IIED); *Johnson v. McDonald*,
16 197 Ariz. 155, 3 P.3d 1075 (App. 1999) (where plaintiffs' claimed IIED based on
17 published false information, trial court properly dismissed IIED claim because conduct
18 was not outrageous and extreme). For all of these reasons, Count IX against Folks &
19 O'Connor should be dismissed.

20 **9. Count X: Fraud-Misrepresentation and Conspiracy**

21 Plaintiff's fraud claim is based upon the assertion that all the "Defendants made
22 certain representations and omissions to Plaintiff." Compl. ¶ 167. The only
23 "representations" by Folks & O'Connor referenced in the Complaint is the Notice of
24 Trustee Sale attached as Exhibit H to the Complaint. Compl. ¶ 83. The Complaint also
25 states Folks & O'Connor sent Plaintiff several letters, but aside from the Notice of
26 Trustee's Sale, Plaintiff fails to identify any such letters or details about the letters.

1 Plaintiff's fraud claim fails on its face because it is woefully inadequate on the
2 specifics required under Ariz. R. Civ. P. Rule 9(b) which include stating the "who, what,
3 where, when and how" the allegedly fraudulent conduct occurred. *Vess*, 317 F.3d at
4 1106. The Complaint conspicuously fails to specifically state what Folks & O'Connor
5 did, when, where and how such conduct was fraudulent. Since Count X of the
6 Complaint fails to meet the requirement to plead fraud claims with specificity, as
7 mandated under Rule 9(b), the Complaint fails to state a fraud claim upon which relief
8 may be granted and Count X against Folks & O'Connor must be dismissed.

9 **10. Count XI: Conversion/Civil Theft**

10 Conversion is a cause of action applicable to personal property. *Huskie v. Ames*
11 *Bros. Motor & Supply Co., Inc.*, 139 Ariz. 396, 402, 678 P.2d 977, 983 (App. 1984).
12 Real property interests cannot be converted because they are not chattel. *Strawberry*
13 *Water Co. v. Paulsen*, 220 Ariz. 401, 407, 207 P.3d 654, 660 (App. 2008). Count XI
14 alleges all Defendants intentionally seized Plaintiff's beneficial use of his real property.
15 Compl. ¶ 178. Count XI should be dismissed because it fails to allege any wrongdoing
16 by Folks & O'Connor specifically as required by Rule 8(a) and because Plaintiff's
17 Property cannot form the basis of a conversion claim.

18 **11. Count XII: Violation of UCC**

19 Arizona law, set forth in its version of the Uniform Commercial Code on
20 negotiable instruments, A.R.S. §§ 47-3301 *et seq.* and 3104, provides that a note
21 qualifying as a negotiable instrument can be enforced by a "holder of the instrument" or
22 a "nonholder in possession of the instrument who has the rights of a holder or a person
23 not in possession of the instrument who is entitled to enforce the instrument. . . ."
24 A.R.S. §§ 47-3301, 47-3104(B) and (E). According to the Complaint, the holder in due
25 course argument is directed toward the original lender, M&I, and its assignee, KCC.
26 There is no allegation of wrongdoing by Folks & O'Connor. Count XII fails to comply

1 with Rule 8(a) to afford Folks & O'Connor "fair notice of the nature and basis of the
2 claim" asserted against it. Therefore, Count XI against Folks & O'Connor should be
3 dismissed pursuant to Rule 12(b)(6).

4 **12. Count XIII: RICO**

5 The elements of a federal civil RICO claim are "(1) conduct (2) of an enterprise
6 (3) through a pattern (4) of racketeering activity (known as 'predicate acts') (5) causing
7 injury to the plaintiff's 'business or property.'" *Lacy v. County of Maricopa*, 2008 WL
8 312095 at *2 (D. Ariz. 2008) (citing *Grimmett v. Brown*, 75 F.3d 506, 510 (9th Cir.
9 1996)); *Sedima, S.P.R.L. v. Imrex Co., Inc.* 473 U.S. 479, 496, 105 S.Ct. 3275, 3285
10 (1985). "Illegal activities that constitute predicate acts for federal RICO liability are
11 identified in 18 U.S.C. § 1961(1)." *Lacy*, 2008 WL 312095 at *2. A pattern of
12 racketeering requires at least two acts of racketeering activity. 18 U.S.C. § 1961(5).

13 A plaintiff pleading a federal RICO violation must allege a violation of one of
14 the four sub-sections of 18 U.S.C. § 1962. Here, it is unclear what Plaintiff bases its
15 RICO claim upon. Plaintiff references "conspiracy", "concerted and predetermined
16 acts" and "enterprise" with an alleged fraud "of intentional nondisclosure, material
17 representation, and creation of incomplete and fraudulent loan documents." Compl. ¶¶
18 191-192.

19 Like all fraud claims, fraud must be pled with particularity. "The Ninth Circuit
20 has held that allegations of predicate acts under RICO must comply with Rule 9(b)'s
21 specificity requirements." *U.S. Concord, Inc. v. Harris Graphics Corp.*, 757 F.Supp.
22 1053, 1061 (N.D. Cal. 1991) (citing *Schreiber Distributing Co. v. ServWell Furniture*
23 *Co.*, 806 F.2d 1393, 1400-01) (9th Cir. 1986). In addition to pleading the time, place and
24 manner of each act of fraud, a plaintiff must also specify the role of each defendant in
25 the fraud or other criminal acts identified in § 1961(1). *Lancaster Community Hospital*
26 *v. Antelope Valley Hospital Dist.*, 940 F.2d 397, 405 (9th Cir. 1991).

1 It is insufficient for a plaintiff to simply allege a mass of acts of wrongdoing
2 without expressly identifying which acts constitute "predicate acts" purportedly
3 supporting a federal RICO claim. *See Laron, Inc. v. Construction Resource Servs., LLC*
4 *et al.*, No. 07-0151-PCT-NVW, 2007 WL 1958732 at *5 (D. Ariz. July 2,
5 2007)(dismissing RICO claim where predicate acts relied upon by plaintiff were not
6 sufficiently alleged); *Savage v. Council on American-Islamic Relations, Inc.*, 2008 WL
7 2951281 at *14 (N.D. Cal. July 25, 2008).

8 Here, the Complaint does not come close to meeting the pleading threshold. The
9 Complaint and Count XIII do not mention any action by Folks & O'Connor which
10 supports the RICO claim. Specifically, Plaintiff has not adequately pled the specifics of
11 any fraud as to Folks & O'Connor's part in the alleged "conspiracy". Count XIII of the
12 Complaint fails to meet the particularity requirements that RICO claims and Rule 9(b)
13 mandate. In addition, Plaintiffs have not pled any criminal activity.

14 Folks & O'Connor and this Court are not required to guess at what Plaintiff is
15 attempting to allege. Due to RICO's quasi-criminal nature, it is vital in a civil RICO suit
16 to "flush out frivolous RICO allegations at an early state of litigation." *Wagh v. Metris*
17 *Direct*, 348 F.3d 1102, 1008 (9th Cir. 2003), overruled on other grounds, *Odom v.*
18 *Microsoft Corp.*, 486 F.3d 541, 551 (9th Cir. 2007). Therefore, based on Plaintiff's
19 complete lack of factual support for his RICO claim against Folks & O'Connor, and the
20 non-specific manner in which it was pled, Count XIII should be dismissed as to Folks &
21 O'Connor.

22 WHEREFORE, for all of the foregoing reasons, Folks & O'Connor, PLLC
23 respectfully requests that the Court dismiss all counts of Plaintiff's Complaint against it
24 with prejudice pursuant to Ariz.R.C.P. Rule 12(b)(6) and award Folks & O'Connor its
25 attorneys' fees and costs in accordance with A.R.S. § 33-807(E).
26

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1 RESPECTFULLY SUBMITTED this 19th day of October, 2009.

2 FOLKS & O'CONNOR, PLLC

3 By Kathleen A. Weber
4 Larry O. Folks
5 Kathleen A. Weber
6 Suite 1140
7 1850 North Central Avenue
8 Phoenix, AZ 85004
9 *Attorneys for Defendant Folks &*
10 *O'Connor, PLLC*

11 ORIGINAL of the foregoing filed
12 this 19th day of October, 2009, to:

13 Clerk of the Pinal County Superior Court
14 971 N. Jason Lopez Circle, Building A
15 Florence, AZ 85232

16 COPY of the foregoing hand-delivered
17 this 19th day of October, 2009, to:

18 Hon. William J. O'Neil
19 Pinal County Superior Court
20 971 N. Jason Lopez Circle, Building A
21 Florence, AZ 85232

22 COPY of the foregoing mailed
23 via first-class mail this 19th day
24 of October, 2009, to:

25 James McKinney
26 618 S. Wickiup Road
Apache Junction, AZ 85119
Plaintiff, pro per

By [Signature]
An Employee of Folks & O'Connor, PLLC

Exhibit 3

1 JAMES MCKINNEY
2 618 S. WICKIUP ROAD
3 APACHE JUNCTION, ARIZONA 85119
4 (602) 717-7502
PRO PER (SELF REPRESENTED LITIGANT)

5 IN THE SUPERIOR COURT OF ARIZONA
6 MARICOPA COUNTY

7 JAMES MCKINNEY, an individual,
8 Plaintiff,

9 vs.

10 KONDAUR CAPITAL CORPORATION, a
11 Delaware Corporation; KONDAUR VENTURE
12 X, LLC; an Delaware LLC; KONDAUR
13 CAPITAL TRUST SERIES 2009-3, a Delaware
14 Statutory Trust; DEUTSCHE BANK TRUST
15 COMPANY DELAWARE, a Delaware
16 Corporation; PAULA CHASTAIN, an individual;
17 PETER BAI, an individual; FOLKS AND
18 O'CONNOR, PLLC, an Arizona LLC;
SECURITY TITLE AGENCY, an Arizona
Corporation; M & I MARSHALL AND
ILSLEY BANK, a Wisconsin Corporation; JOHN
JONES and JANE DOE JONES, husband and
wife, JOHN DOES and JANE DOES I-X; ABC
CORPORATIONS I-V; and XYZ
PARTNERSHIPS I-V; ABC LLCs I-V, XYZ
TRUSTS I-V;

19 Defendants.

CASE NO.:

PLAINTIFF'S APPLICATION FOR
TEMPORARY RESTRAINING ORDER,
PRELIMINARY and PERMANENT
INJUNCTION and ORDER TO SHOW
CAUSE.

(Ex Parte Emergency Application)

Assigned to:

20
21 Plaintiff JAMES MCKINNEY, moves the Court, pursuant to Rule 65(d), Ariz.R.Civ.P., to
22 issue a Temporary Restraining Order, restraining and enjoining Defendants, their attorneys, officers,
23 agents, employees, and any and all other persons in active concert or participation with them, from the
24 acts and conduct as more fully defined below. Plaintiff further moves this Court to issue an Order to
25 Show Cause why a Preliminary and Permanent Injunction should not issue.
26

1 This Application is supported by the Points and Authorities included here and the pleadings
2 and motions filed in this case.

3 Above Defendant's "Kondaur" and "Folk and O'Connor's" illegal lack of standing
4 pursuant to A.R.S. 47 § 3302 and Rules of Civil Procedure 1 & 17(a) are the primary cause of
5 this emergency and permanent application, thwarting otherwise irreparable harm and injury to
6 Plaintiff from this lack of A.R.S. 47 § 3302 standing.

7
8 **JURISDICTION AND VENUE**

9 1. This Court has jurisdiction over the matters related to the emergency, injunctive,
10 provisional, and equitable relief sought herein, pursuant to the agreements of the parties
11 referenced below.

12 2. Venue is proper pursuant to Arizona Revised Statutes § 12-401, et seq.

13 3. The transaction was originated within Maricopa County, Arizona.

14 4. The parties herein are subject to certain contractual obligations that are the
15 subject of this litigation.

16 5. This action is brought, for among other purposes, to restrain and enjoin the
17 Defendants, their agents, employees, representatives, lawyers, directors and officers, from
18 taking any action to improperly transfer, dispose of, or use the property of Plaintiff to foreclose
19 and gain possession of Plaintiff's Property.

20 6. All exhibits are true and correct, attached hereto, and incorporated herein.

21 //

22 //

1
2
3 **BACKGROUND AND PARTIES**

4 7. Plaintiff James McKinney has a primary home at 618 S. Wickiup, Apache
5 Junction affected by Defendants actions in Maricopa County, Arizona, with a note once
6 originated and serviced by M& I Bank. On information and belief, M & I Bank had originated
7 this note in February 2007 for an unknown third party, and previously had serviced it as well
8 until circa August 2009.

9 8. Previously, from March to May 2009, upon continued administrative discovery
10 of regulatory violations, misrepresentations, and material breaches, Plaintiff disputed and
11 rescinded the Note. During that time-period, employees of M & I Bank had advised retired
12 Plaintiff to quit making payments "to qualify for a loan modification" they were proffering.
13 Plaintiff in good faith followed the advice of servicer M & I Bank, yet they denied any
14 reasonable, H.O.E.P.A. compliant modification and instituted a Notice of Trustee Sale instead.
15

16 9. Plaintiff later discovered that only approximately 4% of loans are actually ever
17 modified in the United States, so M & I's inducements to retired Plaintiff were absurd.
18

19 10. Also on information and belief, M & I bank was a servicer, wholly unable as a
20 non-Real Party in Interest to actually contract into loan negotiations and modifications with
21 Plaintiff, in the first place. On information and belief, this non-ability to contract problem as a
22 non-owner is nationwide with most 'securitized' loans in the United States by debt collector
23 servicers who are not Real Parties in Interest.
24
25
26

1 11. M & I Bank's inducements and advice to Plaintiff to default were unnecessary,
2 misleading, fraudulent, and damaging to Plaintiff. M & I bank repeatedly violated R.E.S.P.A.,
3 H.O.E.P.A., F.D.C.P.A., and F.C.R.A. during their servicing era.
4

5 12. In any case, M & I reportedly later 'sold' this *defaulted* dishonored note to some
6 foreign corporate entity with the name Kondaur in its title, as noted below.

7 13. As noted earlier, Defendants Kondaur Capital Corporation; Kondaur Venture X,
8 LLC; Kondaur Capital Trust Series 2009-3 (hereinafter also "Kondaur"), and Defendants Folks
9 and O'Connor (hereinafter also "Folks") are the primary subjects of this T.R.O., and Plaintiff's
10 request for permanent injunction during the adjudication of this case.
11

12 14. Like previous servicer M & I Bank, Defendant servicer Kondaur has repeatedly
13 refused to follow R.E.S.P.A. federal disclosure law within 12 U.S.C. Section 2605(e), in
14 disclosing the relationship of and between the various Kondaur foreign entities, LLCs,
15 Corporations, and offshore Trusts registered in the state of Delaware to Plaintiff, even though
16 Kondaur themselves claim the legal responsibility to do so right in their own introductory letter
17 (Exhibit A, July 31st letter paragraph 10)
18

19 15. There are 44 foreign to Arizona, corporate entities incorporating the name
20 "Kondaur" related to these Defendants registered in the state of Delaware. (Exhibit B)

21 16. 43 of these 44 foreign entities are not registered to do business in Arizona, yet 3
22 of them claim a relationship with Plaintiff, and more importantly to his recorded property
23 rights. (Exhibit A).
24
25
26

1 17. Three of the 44 Kondaur entities: Kondaur Capital Corporation; Kondaur
2 Venture X, LLC; and Kondaur Capital Trust Series 2009-3 appear in two notice papers sent to
3 Plaintiff dated August 4th, 2009 and July 31st, 2009. (Exhibit A).
4

5 18. Only one of the three Kondaur entities, "Kondaur Capital Corporation" is
6 properly registered to do business in the state of Arizona.

7 19. Kondaur Capital Corporation; Kondaur Venture X, LLC; Kondaur Capital Trust
8 Series 2009-3 have purposely, maliciously, and recklessly kept Plaintiff in the dark for 160
9 long unnecessary days, as to which Kondaur corporate entity if any, actually claims and proves
10 ownership of the Note and Deed of Trust. Their own July 31st, 2009 specifically states they
11 had 60 business days to answer. (Exhibit A, July 31st letter, paragraph 10).
12

13 20. Later in December 2009, Kondaur Capital Corporation employee Peter Bai told
14 Plaintiff McKinney, that Kondaur Capital Corporation was indeed *not* a servicer of the loan,
15 but quote an "asset manager".

16 21. This inducement to Plaintiff was a wire fraud upon Plaintiff by Kondaur Capital
17 Corporation.
18

19 22. The July 31st, 2009 letter sent to Plaintiff earlier by Kondaur Capital
20 Corporation, clearly states that Kondaur Capital Corporation is a R.E.S.P.A. 'servicer' of the
21 loan, also known in law as a F.D.C.P.A. §1692 debt collector, clearly contradicting the
22 December wire-fraud statement (Exhibit A, July 31st letter).

23 23. Neither a debt collector nor a servicer is an owner of a note.

24 24. Therefore Kondaur Capital Corporation as non-owner servicer is a commission-
25 based agent-contractee, with an unclarified or unknown third party.
26

1 25. In Kondaur's August 4th 2009 letter, Defendant Kondaur Capital Corporation
2 claims to have received a 'sold' or 'transferred' previously overdue, defaulted, dishonored
3 mortgage note from M & I Bank with the defaulted face amount of \$408,500. (Exhibit A,
4 August 4th, Letter).
5

6 26. Defendants "Kondaur Capital Corporation", some unclear non-registered
7 Kondaur entity, and Power of Attorney "Folks" are attempting to illegally foreclose the
8 Plaintiff's property, regardless to their absolute lack of standing to do so, as described below.
9

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **A. Defendants' Gross Wrongful Conduct**

12 27. Neither defendants Kondaur, nor Defendant Folks and O'Connor are a Holder in
13 Due Course to the Note and Deed of Trust, pursuant to A.R.S. 47 § 3302.

14 28. Defendant Kondaur shamelessly advertises to regulation-violating banks like
15 servicer M & I Bank, that Kondaur purposely and seeks out and 'buys' loans with 'hyper-
16 default', 'regulatory violations' and unbelievably, 'origination fraud'. (Exhibit C).
17

18 29. Kondaur's website homepage at www.kondaur.com/home.aspx is prima facie
19 evidence that Kondaur had full 'knowledge' that they were buying loans with default,
20 dishonor, and/or defect and or fraud, in contrast to the opposite basic foundational elements
21 required by A.R.S. 47 § 3302. (Exhibit C).

22 30. Defendant Kondaur attempted to cover up their purchases of loans with
23 regulatory violations and origination fraud, by politely re-labeling them 'scratch & dent'
24 mortgages, in their advertised inducements for non-Holder in Due Course loans. Kondaur
25 Capital Corporation's CEO Joe Daurio stated in April of 2009:
26

1 *"....a loan is scratch-and-dent for any of the following three reasons: loan*
2 *performance - the loan is either in default or was previously in default; a loan*
3 *where a regulation was violated in the origination process; or for underwriting*
4 *reasons that involved fraud."* (Exhibit D- "Scratch-and-dent Loan Market
Offers Outlet").

5 31. Kondaur's April 2009 'Scratch-and-dent' 'Kondaur News' is prima facie that
6 Kondaur had full 'knowledge' that they were buying loans with default, dishonor, and/or defect
7 and or fraud in violation of A.R.S. 47 § 3302, including Plaintiff's.

8 32. On information and belief, Kondaur has purchased 28,000 mortgage notes
9 throughout the country with regulatory violations and origination fraud, including Arizona,
10 including this Note, and involving the direct subject property of this application.

11 33. Defendant corporation(s) Kondaur Capital Corporation knew that buying loans
12 with regulatory violations and origination fraud negates the Note per A.R.S. 47 § 3302, for lack
13 of a valid Holder in Due Course.

14 34. Defendant Kondaur continued this risky illegal behavior in Arizona due to the
15 large extraordinary profits derived from it. (Exhibit D, Kondaur News page 1 "*....buying loans*
16 *at huge discounts....*").

17 35. On information and belief, Kondaur average purchase price of a Note with
18 regulatory violations is 23 cents on the \$1.00 of the defaulted 'face value' of the note.

19 36. This gross profit from buying illegally originated loans at this ratio, is 4 to 1
20 within just a few months time, necessary to complete a 90-day non-reviewed, non-judicial
21 foreclosure.

22 37. Defendant Kondaur assumed the risk of this illegal behavior in their business
23 model, as the few losses such as Plaintiff's contested note, are made up through the profits of
24
25
26

1 the estimated (95%) remainder of unchallenged loans that are foreclosed on, from least-
2 sophisticated, unrepresented, financially-strapped consumers.

3
4 38. Kondaur hoped that this Plaintiff consumer would collapse from exhaustion into
5 this undisputed category; and in August 2009 offered Plaintiff a \$5,000 cash bribe to drop
6 Plaintiff's claims of regulatory violations and origination fraud, telling Plaintiff to abandon his
7 claims and "get on with your life".

8
9 39. Kondaur's enterprise scheme is to abuse the Arizona non-judicial non-reviewed
10 foreclosure process to further 'clearing title' for previous violators' mistakes. This works to
11 unlawfully yet efficiently and cheaply 'quiet title' in 95+% of the regulatory-deficient, non-
12 Holder in Due Course notes that Kondaur 'assumes'.

13 40. A.R.S. 47 § 3302 clearly defines the necessary Holder in Due Course as follows:

14A. "holder in due course" means the holder of an instrument if:....2. The
15 holder took the instrument: (a) For value; (b) In good faith; (c) Without
16 notice that the instrument is overdue or has been dishonored or that there is an
17 uncured default with respect to payment of another instrument issued as part of
18 the same series;"

19 41. Blacks Law Dictionary also defines a Holder in Due Course as follows:

20 A holder in due course is a person who takes a negotiable instrument, such as a
21 promissory note, for value without knowledge of any apparent defect in the
22 instrument nor any notice of dishonor. (Black's Law Dictionary 2nd Pocket ed.
23 2001 pg. 322).

24 42. As Kondaur knowingly advertised for, sought out, and 'bought' Plaintiff's note
25 with notice of it being "overdue" as noted above in A.R.S. 47 § 3302 (A) 2, Kondaur utterly
26 lacks standing as a Holder in Due Course. (Exhibits C & D).

1 43. Also as Kondaur knowingly advertised for, sought out, and 'bought' the note
2 with notice of it being previously *Dishonored* by Obligor/Plaintiff as noted in A.R.S. 47 §
3 3302, Kondaur lacks standing as a Holder in Due Course.
4

5 44. Also as Kondaur knowingly advertised for, sought out, and 'bought' the note
6 with notice of known *Defect* from M & I Bank as noted in A.R.S. 47 § 3302, Kondaur lacks
7 standing as a Holder in Due Course.
8

9 45. Also as Kondaur knowingly advertised for, sought out, and 'bought' the note
10 without the "*In Good Faith*" required by A.R.S. 47 § 3302, Kondaur lacks standing as a
11 Holder in Due Course.
12

13 46. A non-Holder in Due Course is NOT a Real Party in Interest in the overall
14 transaction.
15

16 47. Only a Holder in Due Course can be a Real Party of Interest in any real estate
17 Chain of Title as well.
18

19 48. Only a Real Party of Interest can plead and defend in this Court per 16 A.R.S.
20 Rules of Civil Procedure, Rule 17(a).
21

22 49. Kondaur is not a Holder in Due Course; and thereby is not a Real Party in
23 Interest.
24

25 50. Kondaur as a non-Holder in Due Course therefore is unable to create an
26 unbroken chain of title necessary to foreclose upon the non-Holder in Due Course note.
27

28 51. Kondaur as a non-Real Party in Interest lacks standing in this Court and lacks
29 standing against this Plaintiff per Rule 17(a).
30

31 52. Kondaur utterly lacks the good faith demanded by A.R.S. 47 § 3302
32

1 53. Kondaur lacks any clean hands implied within A.R.S. 47 § 3302.

2 54. This scheme is damaging hundred of Arizonians, by hindering their otherwise
3 pursuit and corrections of Regulatory and Misrepresentation violations in court.
4

5 55. This scheme is damaging Plaintiff greatly. Plaintiff is a 73-year-old retiree
6 trying to preserve the fruits of a lifetime of labor, his home equity from a non-valid non-party.

7 56. Up to Thursday, Kondaur Capital Corporation has been baiting Plaintiff with
8 settlement offers, that include unreasonable conditions, indemnifications, and change of
9 jurisdiction from Arizona to California. These inequitable 'settlement contracts' have been a
10 sham to 'run the clock' out on Plaintiff up to the non-judicial foreclosure date.
11

12 57. Kondaur Capital Corporation, literally without being a Holder in Due Course and
13 without Chain of Title, is trying to take away Plaintiff's home anyway, *tomorrow morning*,
14 January 5th, 2010, upon the courthouse's steps.

15 58. Defendant's have absolutely NO Arizona recorded chain of title to the Deed of
16 Trust, as bragged to in their 'hyper-default' website home page (Exhibit C).
17

18 59. Plaintiff has publicly rescinded Folks void Trusteeship and Power of Attorney of
19 and over the Deed of Trust, and noticed them of same for this crucial lack of a Holder in Due
20 Course, and appointed another Trustee.

21 60. Arizona law requires recorded, complete Chain of Title. Kondaur's, and Folks
22 and O'Connor's gross neglect of this public assignment law to date, creates repeated theft and
23 conversion in this county in the millions of dollars.
24
25
26

1 61. Finally, public policy greatly favors granting the injunction. Defendants are
2 attempting to conduct a Trustee Sale that lacks a known A.R.S. 47 § 3302 Holder in Due
3 Course, a fraud on Plaintiff and the public.
4

5 **C. Request that this TRO be Granted With Notice**

6 All relevant parties have been noticed with this Application for Temporary
7 Restraining Order by fax and by phone, but time is of the essence to ensure that the
8 Trustee Sale, scheduled for tomorrow morning, January 5th, 2009, is at the very least,
9 delayed for adjudication of standing. The Court is requested to consider this Application
10 Ex Parte and on an Emergency Basis.
11

12 **D. The Bond**

13 The Arizona Rules of Civil Procedure require a bond. Plaintiff is asking for a *de*
14 *minimus* bond, because the amount that the Plaintiff owes to a non-Holder in Due Course
15 is *de minimus*. Plaintiff's value for bond is the home and the home in question makes a
16 good and sufficient bond. Defendants have done everything possible to steal the
17 Plaintiff's home with a lack of good faith in all of their dealings. The Plaintiff requests
18 that a minimum bond of \$250.00 or less be required to stop the Trustee sale and put in
19 place a permanent injunction.
20
21

22 62. Plaintiff realleges and incorporates by reference all prior paragraphs as if fully
23 set forth herein.
24
25
26

1 63. Plaintiff has learned that Defendants, their directors, officers, agents,
2 employees, attorneys and other persons in active concert with them have been transferring and
3 disposing of Plaintiff's property knowingly without a Holder in Due Course.
4

5 64. Unless Defendants, their directors, officers, agents, employees, attorneys and
6 any person in active concert with them or who are acting under their direction, are immediately
7 enjoined from making further improper disposition or use of the Property, and going forward
8 with an illegal Trustee Sale, Plaintiff will be irreparably harmed and suffer injury.
9

10 65. Plaintiff has no adequate remedy at law to prevent further improper transfer, use
11 or other disposition of the Property.

12 66. The act is illegal or wrongful as to the party complaining.

13 67. Plaintiff has a very likely chance of success, without a Holder In Due Course
14 with standing involved in this proceeding.

15 WHEREFORE, based upon the foregoing, Plaintiff asks for the following relief:

16 A. For a temporary order and order to show cause against all Defendants, their
17 officers, directors, agents, employees, attorneys and any person in actual concert with them or
18 who are acting under their direction, are immediately and temporarily enjoined for the time
19 period allowed under Rule 65, Ariz. R. Civ. P., from:
20

21 1. Transferring or otherwise disposing of the Property, as defined in the Verified
22 Complaint;

23 2. Going forward with the Trustee Sale, scheduled for January 5th, 2010, due to the
24 lack of Holder in Due Course; and

25 3. Such other and further relief as this court deems just and necessary; and
26

1 4. An order disqualifying Folks and O'Connor from representing any party
2 adverse to the Plaintiff, and,
3

4 5. An order canceling the current Notice of Trustee Sale and Substitution of
5 Trustee involving Folks and O'Connor PLLC, for lack of Holder in Due Course.

6 B. For a preliminary/permanent injunction against all Defendants, their
7 officers, directors, agents, employees, attorneys and any person in actual concert with them or
8 who are acting under their direction, are immediately and temporarily enjoined for the time
9 period allowed under Rule 65, Ariz. R. Civ. P., from:

10 1. Transferring or otherwise disposing of the Property, as defined in the Verified
11 Complaint, until the lack of Holder in Due Course can be determined.

12 2. Transferring or otherwise disposing of the Property, as defined in the Verified
13 Complaint, until quiet title can be adjudicated;

14 3. Going forward with the non-judicial Trustee Sale, scheduled for January 5th,
15 2010 for lack of A.R.S. 47 § 3302 Holder in Due Course; and
16

17 4. Such other and further relief as this court deems just and necessary.
18

19 E. **CONCLUSION**

20 For all of the foregoing reasons, to protect Plaintiff from permanent irreparable injury
21 as a result of Defendants' misconduct, Plaintiff requests this Court issue a Temporary
22 Restraining Order, and Order the Defendants to show cause why a Preliminary Injunction
23 should not be issued to restrain and enjoin Defendants, their agents, employees, representatives
24 attorneys and assigns, from further misuse of Plaintiffs' Property, as set forth more fully in the
25 Verified Complaint.
26

1 DATED this 4th day of January 2010.

2
3
4 By: James McKinney
5 James McKinney
6 Plaintiff Pro Per
7 (602) 717-7502
8 618 S. Wickiup Road
9 Apache Junction, Arizona 85119
10
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16

17 **VERIFICATION**

18 I, James McKinney, under penalty of perjury, state, that I am a party to the above-entitled
19 litigation, that I have read the attached Application for Emergency Restraining Order and know
20 the contents therein, and the matters and things stated therein, are true and correct to the best of
21 my knowledge, information and belief.

22 DATED this 4th day of January 2010.

23 James McKinney
24 James McKinney
25
26

1
2
3
4 **CERTIFICATE OF SERVICE**

5 A Copy of the foregoing emergency Application for TRO was faxed, phone called in, and mailed
6 this 4th day of January 2010 to:

7 Kondaur Capital Corporation
8 Fax 877-566-3287
9 Phone 888-566-3287
10 1100 Town & Country #1600
Orange, California 92868

11 Larry O. Folks
12 Kathleen A. Weber
13 FOLKS & O'CONNOR
14 Fax 602-256-9101
15 Phone 602-262-2265
16 1850 N. Central Avenue #1140
Phoenix, Arizona 85004

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18 James McKinney
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**I IN THE SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY**

JAMES McKINNEY, an individual,
Plaintiff,

vs.

KONDAUR CAPITAL CORPORATION, a
Delaware Corporation; **KONDAUR VENTURE
X, LLC**; an Delaware LLC; **KONDAUR
CAPITAL TRUST SERIES 2009-3**, a Delaware
Statutory Trust; **DEUTSCHE BANK TRUST
COMPANY DELAWARE**, a Delaware
Corporation; **PAULA CHASTAIN**, an individual;
PETER BAI, an individual; **FOLKS AND
O'CONNOR, PLLC**, an Arizona LLC;
SECURITY TITLE AGENCY, an Arizona
Corporation; **M & I MARSHALL AND
ILSLEY BANK**, a Wisconsin Corporation; **JOHN
JONES and JANE DOE JONES**, husband and
wife, **JOHN DOES and JANE DOES I-X**; **ABC
CORPORATIONS I-V**; and **XYZ
PARTNERSHIPS I-V**; **ABC LLCs I-V**, **XYZ
TRUSTS I-V**;

Defendants.

CASE NO.:

**TEMPORARY RESTRAINING
ORDER**

Assigned to:

IT IS ORDERED for good cause appearing, this court grants this emergency Ex Parte
Temporarily Restraining Order; estopping Defendants from proceeding with the Trustee Sale of
Plaintiff's home, while this complaint's claims and Application for Permanent Injunction are
adjudicated.

It is ordered setting a 30-minute hearing on the Plaintiff's Application for Preliminary Injunction
and Permanent Injunction for _____, _____, 2010 at ____:____.m. before this Court,

AZ _____.

The Plaintiff shall insure that the Defendants are given proper and actual notice of the return
hearing date and pending application for the preliminary and permanent injunction.

Judge of the Superior Court

NOTICE OF ASSIGNMENT, SALE OR TRANSFER OF SERVICING RIGHTS

This notice is to inform you that effective August 16, 2009, the servicing of your mortgage loan is being assigned, sold, or transferred from M&I Marshall & Isley Bank, M&I Bank FSB, or Southwest Bank (M&I Bank) to Kondaur Capital Corporation. Servicing is defined as the right to collect payments from you on your mortgage loan.

The assignment, sale or transfer of the servicing of the mortgage loan does not affect any term or condition of the mortgage instruments, other than the terms directly related to the servicing of your loan.

Except in limited circumstances, the law requires that your present Servicer send you this notice at least 15 days before the effective date of transfer or at closing. Your new Servicer must also send you this notice no later than 15 days after this effective date or at closing.

Your present Servicer is M&I Bank. If you have any questions relating to the transfer of servicing from your present Servicer, call M&I Bank toll free at 1-888-464-5463, available 24 Hours.

Your new Servicer will be Kondaur Capital Corporation. The business address for your new Servicer is 1100 Town & Country Suite 1600, Orange, CA 92668. If you have any questions relating to the transfer of servicing to your new Servicer, please call toll free 1-877-737-8866, Monday through Friday from 8:30 a.m. - 5:30 p.m. PST.

The date that your present Servicer will stop accepting payments from you is August 16, 2009. Effective August 17, 2009, your new Servicer will start accepting payments from you. Begin making your checks payable to Kondaur Capital Corporation and mail your payment to PO Box 1449, Orange, CA 92658-1449.

You should also be aware of the following information, which is set out in more detail in Section 6 of the Real Estate Settlement Procedures Act (RESPA) (12 USC 2605):

During the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old Servicer before its due date may not be treated by the new Servicer as late, and a late fee may not be imposed on you.

Section 6 of RESPA (12 USC 2605) gives you certain consumer rights, if you send a "qualified written request" to your loan Servicer concerning the servicing of your loan, your Servicer must provide you with a written acknowledgment within 20 business days of receipt of your request. A "qualified written request" is a written correspondence, other than notice on a payment coupon or other payment medium supplied by the Servicer, which includes your name and account number, and your reasons for the request. Send written requests to 1100 Town & Country Rd, Suite 1600, Orange, CA 92668.

Not later than 60 business days after receiving your request, your Servicer must make any appropriate corrections to your account, and must provide you with a written clarification regarding any dispute. During the 60-business-day period, your Servicer may not provide information to a consumer reporting agency concerning any overdue payment related to such period or qualified written request, however, this does not prevent the Servicer from initiating foreclosure if proper grounds exist under the mortgage documents.

A business day is a day on which the offices of the business entity are open to the public for carrying on substantially all of its business functions.

Section 6 of RESPA also provides for damages and costs for individuals or classes of individuals in circumstances where Servicers are shown to have violated the requirements of that Section. You should seek legal advice if you believe your rights have been violated.

M&I Bank

Present Servicer

July 31, 2009

Date

Kondaur Capital Corporation

Future Servicer

July 31, 2009

Date

August 4, 2009

JAMES MCKINNEY
618 S Wickiup Rd
Apache Junction, AZ 85219

NOTIFICATION OF ASSIGNMENT, SALE OR TRANSFER OF YOUR MORTGAGE LOAN

RE: Loan Number - 109147
Property Address: 618 S Wickiup Rd
Apache Junction, AZ 85219

The purpose of this notice is to inform you that, effective August 17 2009, your mortgage loan was assigned, sold or transferred to Kondaur Venture X, LLC and contemporaneously assigned, sold or transferred to Kondaur Capital Trust Series 2009-3. The assignment, sale, or transfer of your loan to Kondaur Venture X, Inc., and contemporaneous assignment, sale or transfer to Kondaur Capital Trust Series 2009-3, does not affect any term or condition of the Mortgage, Deed of Trust or Note and this notice requires no action on your part. If you need to contact these entities, they can be reached at:

Kondaur Venture X, LLC or Kondaur Capital Trust Series 2009-3
c/o Kondaur Capital Corporation
1100 Town & Country Road, Suite 1600
Orange, CA 92868
Attention: Jon Daurio, CEO
1 888-566-3287, ext. 2052

The above-described transfers of ownership were not recorded. However, there has been an assignment recorded, or we intend to record an assignment, into the name of the servicer of your loan, Kondaur Capital Corporation. Said recordation was, or is intended to be, in Pinal County, AZ.

If you have any questions relating to the transfers of ownership of your mortgage loan, please contact Kondaur Capital Corporation, the servicer of your mortgage loan and the designated agent for Kondaur Capital Trust Series 2009-3, at the following telephone number, and/or email address:

KONDAUR CAPITAL CORPORATION
Attention: Mike Perry
Toll-free: (877) 737-8866, ext. 2068
mperry@kondaur.com

It is important that you send your monthly payments directly to Kondaur Capital Corporation, the servicer of your mortgage, at the address on your mortgage statement.

Checks should be made payable to Kondaur Capital Corporation. All correspondence and inquiries concerning your mortgage loan should be addressed to Kondaur Capital Corporation.

JOHN DELANEY DELAWARE GOVERNOR | PHOTO 1

Department of State: Division of Corporations

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Frequently Asked Questions

General Information Name Search

44 Matches found

* Required Field

* Entity Name: Kondaur or File Number:

This field is not case sensitive.

Search |

FILE NUMBER	ENTITY NAME
4376689	<u>KONDAUR CAPITAL CORPORATION</u>
4205368	<u>KONDAUR CAPITAL LLC</u>
4626979	<u>KONDAUR CAPITAL TRUST SERIES 2008-1</u>
4636981	<u>KONDAUR CAPITAL TRUST SERIES 2008-2</u>
4638978	<u>KONDAUR CAPITAL TRUST SERIES 2008-3</u>
4687885	<u>KONDAUR CAPITAL TRUST SERIES 2009-1</u>
4715815	<u>KONDAUR CAPITAL TRUST SERIES 2009-3</u>
4547551	<u>KONDAUR VENTURES II B1, L.L.C.</u>
4568453	<u>KONDAUR VENTURES III B1, L.L.C.</u>
4568448	<u>KONDAUR VENTURES III, L.L.C.</u>
4568455	<u>KONDAUR VENTURES III OFFSHORE, L.L.C.</u>
4568449	<u>KONDAUR VENTURES III OFFSHORE REO 1, L.L.C.</u>
4545703	<u>KONDAUR VENTURES II, L.L.C.</u>
4549515	<u>KONDAUR VENTURES II OFFSHORE, L.L.C.</u>
4558190	<u>KONDAUR VENTURES II OFFSHORE REO 1, L.L.C.</u>

4530019	<u>KONDAUR VENTURES I, L.L.C.</u>
4587546	<u>KONDAUR VENTURES IV B1, L.L.C.</u>
4587545	<u>KONDAUR VENTURES IV, L.L.C.</u>
4587547	<u>KONDAUR VENTURES IV OFFSHORE, L.L.C.</u>
4587548	<u>KONDAUR VENTURES IV OFFSHORE REQ 1, L.L.C.</u>
4695761	<u>KONDAUR VENTURES IX B1, L.L.C.</u>
4695768	<u>KONDAUR VENTURES IX, L.L.C.</u>
4695769	<u>KONDAUR VENTURES IX OFFSHORE, L.L.C.</u>
4695772	<u>KONDAUR VENTURES IX OFFSHORE REQ 1, L.L.C.</u>
4612012	<u>KONDAUR VENTURES V B1, L.L.C.</u>
4634842	<u>KONDAUR VENTURES VI B1, L.L.C.</u>
4637111	<u>KONDAUR VENTURES VII B1, L.L.C.</u>
4682513	<u>KONDAUR VENTURES VIII B1, L.L.C.</u>
4682510	<u>KONDAUR VENTURES VIII, L.L.C.</u>
4682516	<u>KONDAUR VENTURES VIII OFFSHORE, L.L.C.</u>
4682517	<u>KONDAUR VENTURES VIII OFFSHORE REQ 1, L.L.C.</u>
4637109	<u>KONDAUR VENTURES VII, L.L.C.</u>
4637115	<u>KONDAUR VENTURES VII OFFSHORE, L.L.C.</u>
4637116	<u>KONDAUR VENTURES VII OFFSHORE REQ 1, L.L.C.</u>
4634838	<u>KONDAUR VENTURES VI, L.L.C.</u>
4634846	<u>KONDAUR VENTURES VI OFFSHORE, L.L.C.</u>
4634851	<u>KONDAUR VENTURES VI OFFSHORE REQ 1, L.L.C.</u>
4611696	<u>KONDAUR VENTURES V, L.L.C.</u>
4611697	<u>KONDAUR VENTURES V OFFSHORE, L.L.C.</u>
4611699	<u>KONDAUR VENTURES V OFFSHORE REQ 1, L.L.C.</u>
4711830	<u>KONDAUR VENTURES X B1, L.L.C.</u>
4711828	<u>KONDAUR VENTURES X, L.L.C.</u>
4711834	<u>KONDAUR VENTURES X OFFSHORE, L.L.C.</u>
4711838	<u>KONDAUR VENTURES X OFFSHORE REQ 1, L.L.C.</u>



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Welcome to Kondaur Capital Corporation

Kondaur Capital Corporation is the only premier purchaser of Scratch & Dent residential mortgage loans. Kondaur maximizes its bids through its unique management, servicing and liquidation strategies.

Kondaur will competitively bid any type of one-to-four family residential loans whatsoever, including

- "Story" loans
- Hyper-defaulted loans
- Loans secured by unique properties
- Loans with origination fraud
- Loans with regulatory violations
- Loans rejected for investor purchase



KONDAUR WILL BID ON A SINGLE LOAN ON A ONE TIME BASIS OR ON A POOL OF LOANS. KONDAUR WILL GIVE LOAN LEVEL PRICING ON WHICH A SELLER MAY "CHERRY PICK" LOANS TO SELL.



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Kondaur News

Kondaur News

Scratch-and-Dent Loan Market Offers Outlet

MBA Newslink Volume 7, Issue 89

By Vijay Palaparty

While scratch-and-dent loans accumulate and restrict cash, loan sellers now have the option of turning to an emerging market of loan buyers who offer liquidation. Sale of such loans provides refinance or resale opportunities, sometimes also ending in foreclosure.

"What drives the scratch and dent market is the seller of the loan who has a need for liquidity; otherwise the seller would not sell the loan at a discount," said Jon Daurio, chairman and CEO of Kondaur Capital Corp., Santa Ana, Calif.

Daurio said a loan is scratch-and-dent for any of the following three reasons: loan performance --the loan is either in default or was previously in default; a loan where a regulation was violated in the origination process; or for underwriting reasons that involve fraud.

Companies such as Kondaur Capital have entered the market, buying loans at huge discounts with the potential of repackaging and selling the loans.

"The process involves high-touch due diligence management," Daurio said. "We might refinance or restructure the loans or we may resell them. If it's a nonperforming loan, we may get a died-in-lieu. What we do is characterize borrowers as those who have the ability and desire to pay and stay, those who should sell and go, and those who do nothing."

Daurio said that loan attributes play a significant part in purchasing decisions. From a due diligence

perspective, the company conducts a two week to four week review of the loans to verify accuracy.

"In the scratch and dent world, most sellers don't have accurate information and many times the information is off," Daurio said. "Factors such as the status of the loan, unpaid balance and collateral values information result in us adjusting our price. Regardless, sellers should be figuring out what is a fair and reasonable amount for these loans."

As homeownership preservation efforts makes headlines, the scratch-and-dent market could make additional progress. "It's a win-win situation," Daurio said. "In the event that we may have to foreclose on a home, it's usually after we make every other effort to keep the borrower in the home. More often than not, the reason is because we can't reach the borrower at all."

"The incredible magnitude of repurchase obligations has led to a liquidity crisis in the mortgage banking industry," Daurio said. "Loan sellers typically do not have sufficient cash to repurchase the loans nor the ability to borrow sufficient cash. As a result, a scratch-and-dent loan buyers will arrange with the loan seller to buy the loan from the loan buyer at less than par, with the loan seller making up the difference. Such differences can and likely will, in the aggregate, amount to billions of dollars."

MBA Newslink Volume 7, Issue 68, Wednesday, April 09, 2008

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Exhibit 4

CERTIFIED COPY

Michael K. Jeanes, Clerk of Court

*** Filed ***

1/6/2010

**SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY**

CV 2010-090122

01/05/2010

HONORABLE KAREN POTTS

CLERK OF THE COURT

M. Scott

Deputy

JAMES MCKINNEY

JAMES MCKINNEY

618 S WICKIUP RD

APACHE JUNCTION AZ 85119

v.

KONDAUR CAPITAL CORPORATION, et al.

KONDAUR CAPITAL CORPORATION

1100 TOWN & COUNTRY

#1600

ORANGE CA 92868

LARRY O FOLKS

MINUTE ENTRY

The Court has considered Plaintiff's Verified Complaint and his Application for Temporary Restraining Order, Preliminary and Permanent Injunction and Order to Show Cause. The Court finds that Plaintiff has set forth multiple alternative and credible causes of action against said Defendants, specific facts that demonstrate that immediate and irreparable loss will result to him before the Defendants may be heard in opposition, and has further demonstrated extraordinary difficulty in effectively identifying and/or communicating with said Defendants, thereby justifying the entry of a temporary restraining order without notice. The Court is particularly concerned that Plaintiff may lose his primary residence at 618 S. Wickiup, Apache Junction, Arizona 85219, tax parcel no. 103-04-057A4 through a trustee sale if a Restraining Order is not entered. Therefore,

IT IS ORDERED that the above named Defendants, their officers, directors, agents, employees, attorneys, and any other persons acting on their behalf, are hereby enjoined from:

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-090122

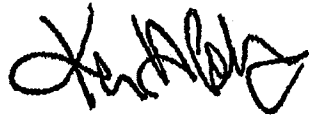
01/05/2010

1. selling, transferring, or otherwise disposing of the real property located at 618 S. Wickiup, Apache Junction, Arizona 85219, tax parcel no. 103-04-057A4; and
2. proceeding with a trustee of the above described property on January 5, 2010, or at any time thereafter absent further court order.

IT IS FURTHER ORDERED that Plaintiff shall serve the summons, the Verified Complaint, the Application for Temporary Restraining Order, Preliminary and Permanent Injunction and Order to Show Cause, and a certified copy of this Minute Entry on the Defendants and that the above Restraining Order shall issue upon the posting of a bond in the amount of \$250.00 with the Clerk of the Court, pursuant to Ariz.R.Civ.P. 65(e).

IT IS FURTHER ORDERED that Defendants shall appear on January 20, 2010 at 4:30 p.m. (30 minutes are reserved) and show cause why a Preliminary Injunction should not issue as requested in Plaintiff's Application for same. Evidence will be taken at this time.

DATED: JAN 05 2010



JUDICIAL OFFICER OF THE SUPERIOR COURT

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>

The foregoing instrument is a full, true and correct copy
of the original document.

Attest 1/5/2010 20
MICHAEL K. JEANES, Clerk of the Superior Court of the
State of Arizona, in and for the County of Maricopa.

By M. J. Scott Deputy

ATTACHMENT D

Filed on 9/9/2009 2:06:56 PM

IN THE SUPERIOR COURT**PINAL COUNTY, STATE OF ARIZONA**Date: 09/09/2009**THE HON WILLIAM J O'NEIL**Division: 1

By Judicial Assistant: JUDY GOSSMAN

JAMES MCKINNEY

Plaintiff(s),

vs.

KONDAUR CAPITAL CORPORATION, et al.,

Defendant(s).

S1100CV200903764**NOTICE****RULING ON MOTIONS/ISSUES**

Plaintiff makes multiple allegations regarding Defendant Kondaur Capital Corporation and requests a restraining order based upon those general allegations. An Injunction is a degree in equity. *State ex. rel. Corbin v. Portland Cement Association*, 142 Ariz. 421, 690 P.2d 140 (Ct. App. 1984). Plaintiff seeks a prohibitory Injunction prohibiting Plaintiff from the sale of property. The issuance of Injunctions in Arizona is controlled by the terms of Rule 65 of the Arizona Rules of Civil Procedure and the provisions of A.R.S. §12-1801 to 1808. Section D governs the issuance of temporary restraining orders and is identical to Rule 65(a) of the Federal Rules. While the Court recognizes that Plaintiff may not have any other adequate legal remedy and irreparable harm may well occur, Plaintiff must still adhere to the laws of the State of Arizona and Rules of Civil Procedure in seeking this Court's approval. "The consideration of the Court may not be restrained unless the act is illegal or wrongful as to the party complaining." *McKay v. Retail Automobile Salesmen Local 1067*, 16 Cal. 2nd 311, 106 P.2d 373, 313 U.S. 566 (1940). Rule 65(h) requires a plaintiff to describe in reasonable detail and not by reference to the complaint or other document the act sought to be restrained. Little is set forth from which this Court can independently determine the essential allegations of Plaintiff's application. Plaintiff makes reference to an Exhibit A which is orderly attached to the Application for Restraining Order. No Exhibit A is attached and the application is not verified. Further, the applicant has failed as required within Rule 65 to certify in writing the efforts which have been made to give notice or the reasons supporting that claims should not be required. No good reason is given. Even in Plaintiff's attached correspondence announcing his rescission, his citation to 15 U.S.C. Sec. 1635(b) is not applicable. First, under subsection(e), "this section does not apply to a residential

mortgage transaction." Likewise, under subsection 2 of that same section, it does not apply to a transaction "which constitutes a right to refinancing." As troublesome, that same code requires the obligor to return consideration.

While this Court is sympathetic to the issues raised by Plaintiff, fundamental rescission law would require the plaintiff to return all monies loaned to him in order to complete a standard rescission. There is no allegation that has occurred either.

Plaintiff must demonstrate the substantial likelihood of success prior to the Court issuing a temporary restraining order. Unfortunately, Plaintiff has not adhered to the statutory requirements or the requirements set forth in Rule 65 requesting a restraining order. This Court is unfortunately not able to issue a restraining order on the documents submitted by Plaintiff. The request for a temporary restraining order is denied. Plaintiff may supplement or refile his request in compliance with state law and the Rules to bring the documents in compliance. He must further demonstrate a legal basis besides references to federal laws that specifically state residential mortgage transactions or refinances are not subject to statute.

Mailed/distributed copy: 09/09/2009

JAMES MCKINNEY
618 S WICKIUP RD
APACHE JUNCTION AZ 85119

Exhibit 1

Uniform Residential Loan Application

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~~Excluded from automatic downgrading and declassification~~

Mortgage Lender (for completion) <input type="checkbox"/> FHA <input checked="" type="checkbox"/> Conventional <input type="checkbox"/> Other: _____		Agency Case Number _____		Lender Case No. _____	
Amount \$ 400,000.00		Interest Rate 7.00%		No. of Months 360	
Amortization Type <input type="checkbox"/> Fixed Rate <input checked="" type="checkbox"/> Other (explain): _____		Agency Case No. _____			
II. PROPERTY INFORMATION AND PURPOSE OF LOAN					
Borrower's Name (print, city, state, & zip code) _____					
Legal Description of Subject Property (attach description if necessary) _____					
Purpose of Loan <input type="checkbox"/> Purchase <input checked="" type="checkbox"/> Construction <input type="checkbox"/> Other (explain): _____					
Completion Date of construction or substantial completion _____					
Year Loan Assumed _____		(a) Present Value of Lot \$ 179,490.00		(b) Cost of Improvements \$ 240,475.00	
Total (a + b) \$ 419,965.00		Total (a + b) \$ 419,965.00			
Complete this line if title is a reference loan _____					
Amount Being Repaid _____					
Purpose of Refinance _____					
Describe improvements <input type="checkbox"/> made <input type="checkbox"/> to be made					
Title will be held in trust Name(s) _____					
Manner in which title will be held _____					
Estate will be held in _____					
Source of Down Payment, Discount Charge and/or Subordinate Financing (explain) _____					
III. BORROWER'S INFORMATION					
Borrower's Name (include Jr, or Sr, if applicable) _____			Co-Borrower _____		
Social Security Number _____			Co-Borrower's Name (include Jr, or Sr, if applicable) _____		
Home Phone (ind. res. use only) (202) 717-7527			Business Phone (ind. res. use only) (202) 717-7527		
Married <input checked="" type="checkbox"/> Unmarried (include single, divorced, widowed)			Married <input type="checkbox"/> Unmarried (include single, divorced, widowed)		
Dependents (list names, birth dates, ages) _____			Dependents (list names, birth dates, ages) _____		
Present Address (street, city, state, zip code) _____			Present Address (street, city, state, zip code) _____		
Mailing Address, if different from Present Address _____			Mailing Address, if different from Present Address _____		
If residing at present address for less than two years, complete the following: _____					
Former Address (street, city, state, zip code) _____			Former Address (street, city, state, zip code) _____		
If married at present address for less than two years, complete the following: _____					
Former Address (street, city, state, zip code) _____			Former Address (street, city, state, zip code) _____		
IV. EMPLOYMENT INFORMATION					
Borrower's Name (include Jr, or Sr, if applicable) _____			Co-Borrower's Name (include Jr, or Sr, if applicable) _____		
Social Security Number _____			Social Security Number _____		
Home Phone (ind. res. use only) (202) 717-7527			Home Phone (ind. res. use only) (202) 717-7527		
Married <input checked="" type="checkbox"/> Unmarried (include single, divorced, widowed)			Married <input type="checkbox"/> Unmarried (include single, divorced, widowed)		
Dependents (list names, birth dates, ages) _____			Dependents (list names, birth dates, ages) _____		
Present Address (street, city, state, zip code) _____			Present Address (street, city, state, zip code) _____		
Mailing Address, if different from Present Address _____			Mailing Address, if different from Present Address _____		
If residing at present address for less than two years, complete the following: _____					
Former Address (street, city, state, zip code) _____			Former Address (street, city, state, zip code) _____		
If married at present address for less than two years, complete the following: _____					
Former Address (street, city, state, zip code) _____			Former Address (street, city, state, zip code) _____		

Environ Biol Fish (2015) 98:1031–1039

Schedule of Real Estate Owner: If additional parcels are owned, use continuation sheet.

Family Address: _____ City: _____ State: _____ Zip: _____

Let any additional percent under which credit has previously been received and indicate amount in credit remarks) and amount such as:

Let any additional percent under which credit has previously been received and indicate amount in credit remarks) and amount such as:

Abstract

Greater Nations

Approved Minutes

VI. DETAILS OF TRANSACTION

WE DECLARATIONS

III. ACKNOWLEDGMENT AND AGREEMENT

[illegible]

Receiver's Signature 	Date 1/22/2011	Disburser's Signature 	Date 1/22/2011
---	-------------------	--	-------------------

3. INFORMATION FOR GOVERNMENT MONITORING PURPOSES

DO-BACKPOWER				DO-BACKPOWER			
I say my report to American War Information				I say my report to American War Information			
Willingness	Agrees or Lattes	Not Agrees or Lattes	Agrees or Lattes	Not Agrees or Lattes	Agrees or Lattes	Not Agrees or Lattes	Agrees or Lattes
Power	Agrees or Lattes	Not Agrees or Lattes	Agrees or Lattes	Not Agrees or Lattes	Agrees or Lattes	Not Agrees or Lattes	Agrees or Lattes

Executive Sales Office: 678-988

Form 1041-ES (2009) 07/20

Loan # 4803673339

Continuation Sheet/Residential Loan Application

Use this continuation sheet if you need more space to complete the Residential Loan Application. Mark B for Borrower or C for Co-Borrower.

Borrower:	Agency Case Number:
James H McKinney	
Co-Borrower:	Lender Case Number:
	4803673339

We fully understand that it is a Federal crime punishable by fine or imprisonment, or both, to knowingly make any false statements concerning any of the above facts as applicable under the provisions of Title 18, United States Code, Section 1001, et seq.

Borrower's Signature:	Date:	Co-Borrower's Signature:	Date:
<i>[Signature]</i>	1/23/08	X	

Provide this to the lender. 705

Federal Mail Form 1003Rev. 7/05

5/11

Jan-29-2007 03:54 PM MI BANK - CRISMON BRANCH 4803673339

KONDAUR/McKinney-00233

Exhibit 2

A. CHICAGO TITLE INSURANCE COMPANY		B. TYPE OF LOAN	
CLOSER: Miguel L. Garcia		1. <input type="checkbox"/> FHA 2. <input type="checkbox"/> FmHA 3. <input checked="" type="checkbox"/> CONV. UNINS.	
DATE OF PRINTING: 02/07/07		4. <input type="checkbox"/> VA 5. <input type="checkbox"/> CONV. INS.	
TIME OF PRINTING: 15:40		6. File Number: 2700571 PSK	
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT		7. Loan Number 35662154	
C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.		8. Mortgage Insurance Case Number 002700571-001 MLG 06	
D. NAME OF BORROWER: JAMES H MCKINNEY		9. Settlement Date: February 07, 2007	
ADDRESS: 618 S WICKIUP RD			
APACHE JCT. Arizona			
E. NAME OF SELLER:			
ADDRESS:			
F. NAME OF LENDER: M&I MARSHALL & ILSLEY BANK			
ADDRESS: 770 N WATER STREET			
MILWAUKEE Wisconsin		53202	
G. PROPERTY LOCATION: 618 S WICKIUP ROAD			
APACHE JCT. Arizona		85219	
H. SETTLEMENT AGENT: CHICAGO TITLE INSURANCE COMPANY			
ADDRESS: 2500 S. Power Road, Bldg 1 Suite 101			
Mesa Arizona		85209	
I. SETTLEMENT DATE: February 07, 2007			
PLACE OF SETTLEMENT: 2500 S. Power Road, Bldg 1 Suite 101			
ADDRESS: Mesa Arizona		85209	
J. SUMMARY OF BORROWER'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION	
100. GROSS AMOUNT DUE FROM BORROWER:		400. GROSS AMOUNT DUE TO SELLER:	
101. Contract sales price		401. Contract sales price	
102. Personal Property		402. Personal Property	
103. Settlement charges to borrower (line 1400)		403. Settlement charges to seller (line 1400)	
104. 333,231.33		404. 333,231.33	
105. 405.		405. 405.	
Adjustments for items paid by seller in advance		Adjustments for items paid by seller in advance	
106. City/town taxes to		406. City/town taxes to	
107. County taxes to		407. County taxes to	
108. Assessments to		408. Assessments to	
109. 409.		409. 409.	
110. 410.		410. 410.	
111. 411.		411. 411.	
112. 412.		412. 412.	
120. GROSS AMT DUE FROM BORROWER		420. GROSS AMT DUE TO SELLER	
333,231.33		420. GROSS AMT DUE TO SELLER	
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER		500. REDUCTIONS IN AMOUNT DUE TO SELLER:	
201. Deposit or earnest money		501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)		502. Settlement charges to seller (line 1400)	
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204. 408,458.00		504. Payoff of first mortgage loan	
205. 505.		505. Payoff of second mortgage loan	
206. 506.		506. 506.	
207. 507.		507. 507.	
208. 508.		508. 508.	
209. 509.		509. 509.	
Adjustments for items unpaid by seller		Adjustments for items unpaid by seller	
210. City/town taxes to		510. City/town taxes to	
211. County taxes to		511. County taxes to	
212. Assessments to		512. Assessments to	
213. 513.		513. 513.	
214. 514.		514. 514.	
215. 515.		515. 515.	
216. 516.		516. 516.	
217. 517.		517. 517.	
218. 518.		518. 518.	
219. 519.		519. 519.	
220. TOTAL PAID BY/FOR BORROWER		520. TOTAL REDUCTIONS AMT DUE SELLER	
408,458.00		520. TOTAL REDUCTIONS AMT DUE SELLER	
300. CASH AT SETTLEMENT FROM/TO BORROWER		600. CASH AT SETTLEMENT TO/FROM SELLER	
301. Gross amt due from borrower (line 120)		601. Gross amt due to seller (line 420)	
333,231.33		601. Gross amt due to seller (line 420)	
302. Less amt paid by/for borrower (line 220)		602. Less reductions in amt due seller (line 520)	
408,458.00		602. Less reductions in amt due seller (line 520)	
303. CASH () FROM () TO BORROWER		603. CASH () TO () FROM SELLER	
75,226.67		603. CASH () TO () FROM SELLER	

ORD# / ABS# 2700571 ESCH 002700571		PSK MLG 06	L SETTLEMENT CHARGES		TIME OF PRINTING: 15:40 DATE OF PRINTING: 02/07/07
700. TOTAL SALES/BROKER'S COMMISSION based on price					
Division of Commission (line 700) as follows:					
701. LB:	\$	to			
702. SB:	\$	to			
703. Commission paid at Settlement (Money retained by broker applied to commission \$)					
704. Other sales agent charges:					
705. Additional commission: \$ to					
800. ITEMS PAYABLE IN CONNECTION WITH LOAN					
801. Loan Origination Fee \$					
802. Loan Discount \$					
803. Appraisal Fee to MORRIS PROPERTY CONSULTANT					
804. Credit Report to TRANS UNION CORP					450.00
805. Lender's Inspection Fee to MET MARSHALL & ILSLEY BANK					16.33
806. Mortgage Insurance Application Fee to					720.00
807. Assumption Fee to					
808. TAX SVC TO FIRST AMERICAN REAL ESTATE FOCLE\$61.00					
809. PROCESSING FEE TO MET MARSHALL & ILSLEY BANK					
810. COMPLETION CERT FEE TO MORRIS PROPERTY CONSULTANT					585.00
811. FLOOD DETERMINATION TO FIRST AMERICAN FLOOD DATA FOCLE\$10.50					100.00
812. CIA ACCOUNT TO MET MARSHALL & ILSLEY BANK					
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE					329,968.00
901. Interest from to @ \$ /day for 0 days					
902. Mortgage Insurance Premium for 0.00 months to					
903. Hazard Insurance Premium for 1.00 years to AMERICAN FAMILY INS					628.00
904.					
905.					
1000. RESERVES DEPOSITED WITH LENDER					
1001. Hazard insurance 0.00 month @ \$ per month					
1002. Mortgage insurance 0.00 month @ \$ per month					
1003. City property taxes 0.00 month @ \$ per month					
1004. County property taxes 0.00 month @ \$ per month					
1005. Annual assessments 0.00 month @ \$ per month					
1006. 0.00 month @ \$ per month					
1007. 0.00 month @ \$ per month					
1008. Aggregate Accounting Adjustment					0.00
1100. TITLE CHARGES					
1101. Settlement or Closing Fee to Chicago Title Insurance Co.					
1102. Abstract or title search to					150.00
1103. Title examination to					
1104. Title insurance binder to					
1105. Document preparation to					
1106. Notary fees to					
1107. Attorney's fee to					
1108. Title insurance to Chicago Title Insurance Co. (includes above items numbers:)					264.00
1109. Lender's coverage \$ 408,458.00 \$ 264.00					
1110. Owner's coverage \$ 0.00 \$					
1111. ENDORSEMENT S.1, ARM, FOUNDATION					
1112. PROPERTY INSPECTION FEE TO CTCIC					200.00
1113. EXPRESS MAIL FEE TO CTCIC					100.00
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES					20.00
1201. Recording fees: Deed \$; Mortgage \$; Release \$					
1202. City/county tax/stamps: Deed \$; Mortgage \$					30.00
1203. State tax/stamps: Deed \$; Mortgage \$					
1204.					
1205.					
1300. ADDITIONAL SETTLEMENT CHARGES					
1301. Survey to					
1302. Pest inspection to					
1303. 1ST 1/2 2006 TAXES PAID \$735.09					
1304.					
1305.					
1306.					
1307.					
1400. TOTAL SETTLEMENT CHARGES (enter on lines 103, Section J and 502, Section K)					333,231.33

Exhibit 3

109147-Payment History
ACCOUNT: 00035662154 NOTE: 40000 SHORT NAME: MCKINNEY JAMES

ORIGINAL BALANCE:	408,458.00	CURRENT BALANCE:
407,272.56		
ORIGINAL INTEREST:	0.00	INTEREST ACCRUAL:
12,591.5099827		
DEFERRED INT BAL:	0.00	DEF INT PAID YTD:
0.00		
LAST MAINT DATE: 06/09/09		
ORIGINAL BUYDOWN:	0.00	BUYDOWN BALANCE:
0.00		
PREV MAINT DATE: 06/02/09		
BUYDOWN PD YTD:	0.00	CUR INT REBATE:
0.00		
GOOD THRU: 00/00/00		
ORIG OTHER CHGS:	0.00	NEXT INT REBATE:
0.00		
GOOD THRU: 00/00/00		
INTEREST PAID YTD:	2,375.76	INTEREST PAID TO:
01/01/09		
NET PROCEEDS:	0.00	UNAPPLIED FUND BAL:
0.00		
ESCROW BALANCE:	1,183.32-	ESCROW RESERVE BAL:
0.00		
LATE CHARGES:	475.16	EXTENSION FEES:
0.00		
INT PAID TOT:	45,196.42	MISC CHARGES:
125.00		0.00
ACTIVE ACCRUAL:		

	RATE	RELATION	FLOOR	CEILING	SPLIT RATE TYPE:
01: RATE PLAN:	0000000				
	7.000000 +	3.250000	0.000000	13.000000	DOLLAR LIMIT
PRICE PLAN:	000				
02:	0.000000		0.000000	999.999999	
0.00 APR:	0.000000	BILL ALL INT: N			
INTEREST TYPE: S	BASIS: 3	FUT BASIS DATE: 00/00/0000		FUT BASIS: 5	
EARN/REB MTH: 1	INDEX: 111	1098: Y FREQ: I-I			
NEXT RATE CHANGE: 03/01/12		NEXT PAYMENT CHANGE: 04/01/12		VAR PLAN: 350	
NEG AM IND: N	NEG AM STAT: N	NEG AM OVER: Y			
RATE EXP: 00/00/00	OPT TYPE:	OPT ID:		P&I AMORT: 01/19/12	
RATE CHANGE DELAY IND: N					

	NEXT BILLING DATE	NEXT SCHED DATE/PMT #	LAST BILLING DATE
NEXT PMT DUE DATE			
INTEREST:	07/01/09	07/01/09 1	06/01/09
02/01/09			
TOTAL:	00/00/00	00/00/00 0	00/00/00
00/00/00			

LOAN CATEGORY:	M	LOAN STATUS:	N	MGMT CLASS:
FLDL	CAP INT IND:		N	
COST CENTER:	1602	NOTE TYPE:	273	FED CALL REPORT:
C462	UNPAID CAP INT:	0.00		
BRANCH NO:	405100	OFFICER NO:	41607	SEND NO BILL:
A	INT EARNED YTD:	0.00		
CHARGE DDA/SAV:		CHARGE ACCT:	000000000000	BILL TYPE:
A	ELECTRONIC FEED:	N		
TIMES RENEWED:	1	CENSUS TRACT:		AMORT EDIT:
N	PAPER FEED:	Y		
PRINCIPAL TYPE:	R	COMMITMENT NO:	0	PAID OUT IND:
0				
NAME/ADDRESS IND:	1	BILL NAME/ADDR:	1	PAYMENT METHOD:
P	PRIORITY NUMBER: 000			
PROP/NAME ADDR:	9	PROP ZIP CODE:	85219	USER CODES:
2	A			
APPRAISAL DATE: 01/19/07		APPRAISAL:	550,000	ESC ACCT NO:
000000000000	ESC INT PLAN:	000		

109147-Payment History

ORIG LTV: 80.00 CUR LTV: 79.77 AUTOPAY IND:

0 RC USAGE: N CLTV: 0.00

POINTS: 0.00 RISK RATING: 603 15 - 30 -

60 - 90 15 - 30 - 60 - 90

EOPY INT: 28,397.39 UCC DATE: 00/00/00 TIMES LATE: 005 004

003 002 ROLL TM LT

EOPY PTS: 0.00 CTD ACCRUAL: 0.00000000 AVG DLY BAL:

0.00

SBA: N AUTO NON/RE-ACCR: Y/N PMT-TERM CHG TYP:

0 RND IND: N MIN PMT IND: N

TLC: N CRA REPORTABLE: ACCRUAL METHOD:

A COLLECTION/REFERRAL: Y

COUPON START DATE 00/00/00 COUPON START NO: 0 COUPON NUMBER PMTS:

0 DROP IND: 0 DROP REASON: 0

LEAD TIME IND: N LEAD TIME DAYS: 000 NOTE BILL ONLY:

N APPL SCORE: 0754

OCCUPANT: Y PAYMENT REAMORT IND:

00/00/00 FINAL SCORE: 0000 ASSUMED DATE:

REGULATION Z: N FORECLOSURE: 05/29/09 ASSUMED:

0 MKT VALUE: 0

OVER LL IND: N WAREHOUSE IND:

% GVT INS: 0.000000

EXPECTED MATURITY: 03/01/37 ABA ROUTING: 0 ABA ACCT:

BALLOON LOAN IND: 1

SECT OF ACT: 80. GUARANTEE ESCR: 00 SUBNOTE NUMBER:

0 DELIVERY DATE: 00/00/00

CO-MAKE1 NAME/ADDR: EMPLOYER NAME/ADDR:

A SEC NAICS CD: 000000 OCS ACTIVE IND:

CO-MAKE2 NAME/ADDR: ATTORNEY NAME/ADDR:

00/00/00 RESTRUCT IND: OCS PURGE DATE:

CO-MAKE3 NAME/ADDR: ACH ACCT TYPE:

00 CREDIT BAL IND: N ACH/AUTOPAY DAY:

CLIENT REF NO: SELF GEN FGN CURR CODE: LTR CREDIT N/S:

BA ELIG/INELIG:

CASE NO: 000000000000 HOLD UNAPPLIED: 000000000000 HOLD BUYDOWN:

000000000000 TRACK CODE: BANK

HOLD ESC/FEE: 000000000000 AMORT EFF RATE: 0.000000 FEE AMORT TO DATE:

00/00/00 UCCC IND: Y

FHA INDICATOR: 0 CONTRACT TYPE: 1* FHLB TYPE/CLASS:

00 / 00 RATIFY DATE: 00/00/00

HOLD RELEASE DAYS: 00 DP COLL PERCENT: 000 DP COLL ACCT:

000000000000 MCOLL: N

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INVESTOR: 0 PROPERTY TYPE: 42 FHLB UNITS:

00000 DUAL ACCOUNTING: N

SPLIT RISK 1 SPLT RSK LMT SPLIT RISK PERC 1 0.00 SPLIT RISK BAL 1

0.00 SPLIT RISK 2 SPLIT RISK PERC 2 0.00 SPLIT RISK BAL 2

0.00 RC INT ONLY IND: N

REPORT TO HMDA: Y BUILDING CODE: FHLB STATE:

FUNDS INDEX: 000 CR BAL CHK OVRD: Y

000 REFINANCED: FHLB INDEX:

FUNDS RATE: 0.0000 OVERHEAD TYPE: 00

00 ACCUDRAW IND: MORTGAGE IND: 1 FHLB RATE CAP:

DISPOSITION: 0 PART/SYND IND: 0 AUTO PART

DISTRIBUTION: N PMI/1098 IND: N

FORMULA 1: 0.00 A/R COLLAT: 0.00 REL BANK NO:

0 ORIG LL\$: 0.00

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109147-Payment History

FORMULA 2: 0.00 SBA GRP NUM: SBA STATUS: SBA BASIS
POINT: 0.000 HPA CD/6807-1098 IND: N/Y
INCOME: 0.00 HMDA STATE/CNTY: 04021 GUAR COMP NO:
00000000000 PMI CANCEL DATE: 00/00/00
PER EARN: 56,589.4174717 TOT EARN: 56,589.4174717 AVERAGE BAL:
407,272.56 PMI TERM DATE: 00/00/00
PURCHASE DATE: 00/00/00 PURCHASE LOAN ID:
0.00 PMI MIDPOINT DATE: 00/00/00 PURCHASE AMT:

TRANS COMP NO: 00000000000 TRANSFER ID:
TRANSFER IND:
CURR PRIN BNP: 0.00 CURR INT BNP: 0.00
UNAMORT ORG AMT: 0.00
TOTAL PRIN BNP: 0.00 TOTAL INT BNP: 0.00 CUR
AMORT UNERND: 0.00
ST INT DATE: 02/07/07 TERM: 360 MAT. EXT MONTHS: 0
AMORT PR MTH BAL: 0.00
ISSUE DATE: 02/07/07 MATURITY DATE: 03/01/37
AMORT EARNED MTD: 0.00
RENEWAL DATE: 03/19/08 LAST TRAN DATE: 04/03/09
AMORT EARNED YTD: 0.00
ACC/REB HOLD: N 00/00/00 LAST TRAN CODE: 714
AMORT EARNED LTD: 0.00
FL PMT DT-ADV: 03/01/37 LAST TRAN AMT: 2,375.76
POST-MATURITY BILL IND: N
COLL CODE/IND: R0/ COLL PERCENT: 100
POST-MATURITY BILL FREQ: 0
DESC: 618 SOUTH WICKIUP ROAD APACHE JUNCTION AZ 85219-2577 POST
MATURITY ADVANCE IND: N
RIGHT TO CURE NUMBER: 0 RIGHT TO CURE STATE:
INV/COMM NUM: 000000
RIGHT TO CURE DATE SENT: 00/00/00 INV
ACTION CODE: 000
CURTAILMENT IND: 0 INV
ACTION DATE: 00/00/00

UNAPPLIED REASON:
DEFICIT COMMIT NO: 000
REASON RELEASE DATE: 00/00/0000 BUYDOWN CODE:
BUYDOWN CODE RELEASE DATE: 00/00/0000 UNA
CREDIT BUREAU IND: Y LATE
CREDIT BUREAU RELEASE DATE: 00/00/0000 LATE
CB ACCOUNT TYPE: 26 LATE
HUD ACTION DATE: 00/0000 NOTE
REMOVAL CODE: 000
PEND BALANCE: .00
INDEX RATE: 0.000000
PEND TERM: 000
PEND MARGIN: 0.000000 PEND
RATE CAP: 0.000000
PEND PAY CAP: 0.000000
OPT DATE: 00/00/0000 PEND MAINT DATE: 00/00/0000 CONV
CONV DTE IND: N
FEE IND: 0.00
CONV EFF DATE: 00/00/0000 INT REIMBURSEMENT 0.00 1099
REIMB INT: 0.00
FOREGONE INTEREST: 0.00
INTEREST RATE: 7.000000 EOPM REBATE: 0.00 ORIG
ID#
CLS OVERRIDE: N
CREDIT BUREAU STATUS: 82
SPECIAL COMMENTS: BO CREDIT BUREAU GRACE DAYS: 0 NOTE
DATE OF OCCURRENCE: 02/27/2009

YEAR:

MODEL:

VIN/SERIAL CD:

NBR:

LIEN FILING DTE:

00/00/00

TAX ID:103-04-05706 (COVERS MORE

RECORD BOOK:

INSTRUMENT NBR:

USER SCORE1:

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0000 MAKE:

VIN/SERIAL NBR:

APPL

LIEN RELEASE DATE:

00/00/00

PROP

RECORD PAGE:

USER SCORE2:

USER DEFINITION SEGMENT DATE AMOUNT DESCRIPTION
10. 01/30/07 0.00
ESAN RECORD ESAN OPT: Y RESET DATE: 06/01/09 STATUS: N PLAN NO: 905 NXT PYMT
EFF DATE: 07/01/10 ESCR SURP IND: Y
LAST SUCC ADJ DATE: 00/00/00
REFUND DT: 00/00/00 AUTO REF STOP DAYS: 0 ESCR COMP YR: 07/09 SURP
SURP SHORT BAL: .00 DFCY BAL: .00

PAYMT SCHEDULE S# EFF DATE TYP PAY FREQ TOTAL PAYMENT AMT P&I AMOUNT
ESCROW AMOUNT BUYDOWN AMOUNT NXT PMT#
PAYMT PERCENT PAYMT MINIMUM BUS PAYMT PLAN
01 05/01/08 0 14 1 0.00 0.00 0.00
0.00 0.00 0 0 000 00

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PAYMT SCHEDULE S# EFF DATE TYP PAY FREQ TOTAL PAYMENT AMT P&I AMOUNT
ESCROW AMOUNT BUYDOWN AMOUNT NXT PMT#
PAYMT PERCENT PAYMT MINIMUM BUS PAYMT PLAN
02 07/01/09 0 333 1 217.40 217.40 0.00
217.40 0.00 0 0 000 00

NOT PAID AMOUNT CONSTANT BILLED AMOUNT
BILLING DUE DATE PAID DATE LC IND TOTAL
2,375.76 02/01/09 00/00/00 2,375.76
PRINCIPAL/PAYMENT

NOT PAID AMOUNT CONSTANT BILLED AMOUNT
BILLING DUE DATE PAID DATE LC IND TOTAL
2,375.75 03/01/09 00/00/00 2,375.75
PRINCIPAL/PAYMENT

NOT PAID AMOUNT CONSTANT BILLED AMOUNT
BILLING DUE DATE PAID DATE LC IND TOTAL
2,375.76 04/01/09 00/00/00 2,375.76
PRINCIPAL/PAYMENT

NOT PAID AMOUNT CONSTANT BILLED AMOUNT
BILLING DUE DATE PAID DATE LC IND TOTAL
2,375.76 05/01/09 00/00/00 2,375.76
PRINCIPAL/PAYMENT

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NOT PAID AMOUNT		CONSTANT		BILLED AMOUNT	
BILLING	DUE DATE	PAID DATE	LC IND	TOTAL	
2,375.75	06/01/09	2,375.75	00/00/00	2,375.75	PRINCIPAL/PAYMENT

ESCR# ACT/INACT: TYPE: T COLLECTION: 2
 DISBURSEMENT DATE AMOUNT TAX SUB CAT: 01
 02 PAYEE: 00020110000 CATEGORY: 0.00
 NEXT EXPECTED: 00/00/00 COV: 0.00 RATE: 0.000000
 EXP DATE: 00/00/00 PREM CALC: 0.00 CASE NO: 00
 LAST ACTUAL: 00/00/00 DISB EXCEPT: 0 N INT IND: N
 CURRENT PERIOD: FREQUENCY: 1
 CUST/PAYEE: PREVIOUS PERIOD: 0.00
 0.00 CUR FHA ANV: 0000 EVEN AMT: Y NO INST: 00
 PEND FHA ANV: 0000 PEND PREM AMT: 0.00
 CK GP NO: 000 CNTR NO: 0012813773 HIT: 0.00
 YTD DISB AMT: STATUS IND: N SUFFIX: 0000 TRN: R7360 IND: N
 INST 1 AMT/DTE: .00 00/00 INST 2 AMT/DTE:
 .00 00/00 INST 3 AMT/DTE: .00 00/00 INST 4 AMT/DTE:
 .00 00/00
 ID 01 10304057A4

ESCR# ACT/INACT: TYPE: I COLLECTION: 1
 DISBURSEMENT DATE AMOUNT HAZ SUB CAT: 01
 40 PAYEE: 00000460745 CATEGORY: 1,425.45
 NEXT EXPECTED: 01/31/10 COV: 407,272.56 RATE: 0.000000
 EXP DATE: 01/31/10 PREM CALC: 0.00 CASE NO: 00
 LAST ACTUAL: 01/31/09 DISB EXCEPT: P X INT IND: N
 CURRENT PERIOD: FREQUENCY: 4
 CUST/PAYEE: PREVIOUS PERIOD: 0.00
 0.00 CUR FHA ANV: 0000 EVEN AMT: Y NO INST: 00
 PEND FHA ANV: 0000 PEND PREM AMT: 0.00
 CK GP NO: 000 CNTR NO: 0000000000 HIT: 1,183.32
 YTD DISB AMT: STATUS IND: N SUFFIX: 0000 TRN: R7360 IND: N
 INST 1 AMT/DTE: .00 00/00 INST 2 AMT/DTE:
 .00 00/00 INST 3 AMT/DTE: .00 00/00 INST 4 AMT/DTE:
 .00 00/00
 ID 01 FORCE PLACED HAZ INS

TOTAL BILLED NOT PAID

11,878.78

NOTE#	EFF DATE	TR#	ACT DATE	TCD REV	PRINCIPAL AMT	TOTAL AMT
PRIN BAL AFTER			COLLAT AMT		SN/I#	
PAYEE			COLL/ITEM BAL		INTEREST AMT	
40000	02/07/07	001	02/14/07	310 0	0.00	0.00
	0.00			0.00	0	
				0.00	0.00	

0

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NOTE#	EFF DATE	TR#	ACT DATE	TCD REV	PRINCIPAL AMT	TOTAL AMT
PRIN BAL AFTER	PAYEE		COLLAT AMT	SN/I#	INTEREST AMT	
			COLL/ITEM BAL			
40000	02/07/07	002	02/16/07	750 0	78,490.00	78,490.00
	78,490.00			0.00	0	
				0.00	0.00	
40000	04/01/07	001	04/02/07	750 0	797.80	797.80
	79,287.80			0.00	0	
				0.00	0.00	
40000	04/01/07	002	04/02/07	610 0	0.00	797.80
	79,287.80			0.00	0	
				0.00	797.80	
40000	04/03/07	001	04/03/07	750 0	36,445.20	36,445.20
	115,733.00			0.00	0	
				0.00	0.00	
40000	04/26/07	001	04/26/07	750 0	53,452.96	53,452.96
	169,185.96			0.00	0	
				0.00	0.00	
40000	05/01/07	001	05/01/07	750 0	651.88	651.88
	169,837.84			0.00	0	
				0.00	0.00	
40000	05/01/07	002	05/01/07	610 0	0.00	651.88
	169,837.84			0.00	0	
				0.00	651.88	
40000	05/10/07	001	05/10/07	750 0	49,032.06	49,032.06
	218,869.90			0.00	0	
				0.00	0.00	
40000	06/01/07	001	06/01/07	750 0	1,267.86	1,267.86
	220,137.76			0.00	0	
				0.00	0.00	
40000	06/01/07	002	06/01/07	610 0	0.00	1,267.86
	220,137.76			0.00	0	
				0.00	1,267.86	
40000	06/15/07	001	06/15/07	750 0	18,750.00	18,750.00
	238,887.76			0.00	0	
				0.00	0.00	

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40000	07/01/07	001	07/02/07	750	0	1,324.08	1,324.08		
	240,211.84				0.00	0	0.00		
					0.00				
40000	07/01/07	002	07/02/07	610	0	0.00	1,324.08		
	240,211.84				0.00	0			
					0.00				
40000	07/17/07	001	07/17/07	750	0	26,975.46	26,975.46		
	267,187.30				0.00	0	0.00		
					0.00				
40000	08/01/07	001	08/01/07	750	0	1,505.71	1,505.71		
	268,693.01				0.00	0	0.00		
					0.00				
40000	08/01/07	002	08/01/07	610	0	0.00	1,505.71		
	268,693.01				0.00	0			
					0.00				
40000	08/02/07	001	08/02/07	750	0	58,312.32	58,312.32		
	327,005.33				0.00	0	0.00		
					0.00				

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LOAN ACCOUNTING

NOTE INQUIRY

NOTE#	EFF DATE	TR#	ACT DATE	TCO REV	PRINCIPAL AMT	TOTAL AMT
PRIN BAL AFTER	PAYEE		COLLAT AMT	SN/I#	INTEREST AMT	
COLL/ITEM BAL						
40000	08/06/07	001	08/06/07	750	0	22,000.00
	349,005.33				0.00	0
					0.00	0.00
40000	09/01/07	001	09/05/07	750	0	2,042.63
	351,047.96				0.00	0
					0.00	0.00
40000	09/01/07	002	09/05/07	610	0	0.00
	351,047.96				0.00	0
					0.00	2,042.63
40000	09/05/07	001	09/05/07	750	0	40,000.00
	391,047.96				0.00	0
					0.00	0.00
40000	10/01/07	001	10/01/07	750	0	2,219.18
	393,267.14				0.00	0
					0.00	0.00

109147-Payment History									
40000	10/01/07	002	10/01/07	610	0	0.00	0	0.00	2,219.18
	393,267.14					0.00		2,219.18	
						0.00			
40000	11/01/07	001	11/01/07	750	0	0.00	0	2,338.05	2,338.05
	395,605.19					0.00		0.00	
						0.00			
40000	11/01/07	002	11/01/07	610	0	0.00	0	0.00	2,338.05
	395,605.19					0.00		2,338.05	
						0.00			
40000	12/01/07	001	12/03/07	750	0	0.00	0	2,276.08	2,276.08
	397,881.27					0.00		0.00	
						0.00			
40000	12/01/07	002	12/03/07	610	0	0.00	0	0.00	2,276.08
	397,881.27					0.00		2,276.08	
						0.00			
40000	01/01/08	001	01/02/08	750	0	0.00	0	2,365.49	2,365.49
	400,246.76					0.00		0.00	
						0.00			
40000	01/01/08	002	01/02/08	610	0	0.00	0	0.00	2,365.49
	400,246.76					0.00		2,365.49	
						0.00			
40000	02/01/08	001	02/01/08	750	0	0.00	0	2,379.55	2,379.55
	402,626.31					0.00		0.00	
						0.00			
40000	02/01/08	002	02/01/08	610	0	0.00	0	0.00	2,379.55
	402,626.31					0.00		2,379.55	
						0.00			
40000	03/01/08	001	03/03/08	750	0	0.00	0	2,239.26	2,239.26
	404,865.57					0.00		0.00	
						0.00			
40000	03/01/08	002	03/03/08	610	0	0.00	0	0.00	2,239.26
	404,865.57					0.00		2,239.26	
						0.00			
40000	03/19/08	001	04/04/08	661	0	0.00	0	0.00	0.00
	404,865.57					0.00		0.00	
						0.00			

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LOAN ACCOUNTING

NOTE INQUIRY

109147-Payment History									
NOTE#	EFF DATE	TR#	ACT DATE	TCD	REV	PRINCIPAL AMT	TOTAL AMT		
PRIN BAL AFTER	PAYEE		COLLAT	AMT	SN/I#	INTEREST AMT			
			COLL/ITEM	BAL					
40000	04/01/08	001	04/02/08	750	0	2,407.01	2,407.01		
	407,272.58				0.00	0	0.00		
					0.00				
40000	04/01/08	002	04/02/08	610	0	0.00	2,407.01		
	407,272.58				0.00	0			
					0.00				
40000	04/01/08	003	04/04/08	400	0	NEW RATE=	7.000		
							NEW BASIS= 3		
40000	05/01/08	001	04/30/08	610	0	0.00	2,361.72		
	407,272.58				0.00	0	0.00		
					0.00				
							UNAPPLIED FUND AMT		
							2,361.72		
40000	05/01/08	002	05/22/08	610	0	0.00	2,375.76		
	407,272.58				0.00	0	0.00		
					0.00		2,375.76		
							UNAPPLIED FUND AMT		
							2,361.72-		
40000	05/30/08	001	05/30/08	668	0	0.02	0.02		
	407,272.56				0.00	0	0.00		
					0.00				
40000	06/01/08	001	05/30/08	610	0	0.00	2,375.76		
	407,272.56				0.00	0	0.00		
					0.00		2,375.76		
					0.00				
40000	07/01/08	001	07/01/08	610	0	0.00	2,375.76		
	407,272.56				0.00	0	0.00		
					0.00		2,375.76		
					0.00				
40000	08/01/08	001	07/30/08	610	0	0.00	2,375.76		
	407,272.56				0.00	0	0.00		
					0.00		2,375.76		
					0.00				
40000	09/01/08	001	09/03/08	610	0	0.00	2,375.76		
	407,272.56				0.00	0	0.00		
					0.00		2,375.76		
					0.00				
40000	10/01/08	001	10/02/08	610	0	0.00	2,375.76		
	407,272.56				0.00	0	0.00		
					0.00		2,375.76		
					0.00				
40000	11/01/08	001	11/07/08	610	0	0.00	2,375.76		
	407,272.56				0.00	0	0.00		
					0.00		2,375.76		
					0.00				

109147-Payment History

40000	12/01/08	001	12/12/08	610	0	0.00	2,375.76
	407,272.56				0.00	0	
					0.00	2,375.76	
					0.00		
40000	01/01/09	001	01/09/09	610	0	0.00	2,375.76
	407,272.56				0.00	0	
					0.00	2,375.76	
					0.00		
40000	04/03/09	001	05/11/09	714	0	0.00	1,183.32
	407,272.56				0.00	0	
					0.00	0.00	
					0.00		
						1,183.32	

ESCROW AMT

098

M&I MARSHALL AND ILSLEY BANK
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LOAN ACCOUNTING

NOTE INQUIRY

PAGE 7377

NOTE FEE PLAN:	E3	BILL FREQ:		MIN FEE:
ENTERED DATE:	03/06/08			
NUMBER:	1	BILL LEAD TIME:	0	MAX FEE:
ASSESS START:	03/06/08			
DELETE:		DETAIL BILL IND:		CURR ASSESS:
\$0.00	ASSESS END:	99/99/99		
STOP IND:		0		YTD ASSESS:
\$0.00	1ST PMT DUE:	00/00/00		
NEW TODAY:		N		ORIG ASSESS:
\$250.00	PRIOR PMT DUE:	00/00/00		
NEW THIS PERIOD:		Y		WAIVED YTD:
\$0.00	CURR PMT DUE:	00/00/00	1	
CHG DEPOSIT IND:		FEE TYPE:	N	CURR DUE:
\$0.00	NEXT PMT DUE:	00/00/00		
CHG ACCT:		0		TOTAL DUE:
\$0.00	START EARN:	00/00/00	MS	
EARN IND:		0		PAID YTD:
\$0.00	GOOD DATE 1:	00/00/00	N	
FINANCE IND:		EARNINGS TERM:	0	EARN YTD:
\$0.00	GOOD DATE 2:	00/00/00		
NFEE BASIS:		7		EARN MTD:
\$0.00		CAP FEE IND:	N	
		DISPLAY TO CUST:	Y	EARN LTD:
\$0.00		NOTE CALC IND:	N	PRIOR MNTH UNEARN
\$0.00				CURR MNTH UNEARN:
\$0.00				NEXT MNTH UNEARN:
\$0.00				UNPAID CAP FEES:

RLTD INDEX:	COMPONENT 1	COMPONENT 2	COMPONENT 3
RATE:	000	000	000
RLTD-KEY:	250.00	0.00000000	0.00000000
RLTD-SEG:	00000040000	00000000000	00000000000

NOTE FEE PLAN:	F9	BILL FREQ:		MIN FEE:
ENTERED DATE:	02/20/07			
NUMBER:	1	BILL LEAD TIME:	0	MAX FEE:

109147-Payment History

DELETE:	ASSESS START:	02/20/07	DETAIL BILL IND:		CURR ASSESS:
\$0.00	ASSESS END:	99/99/99	0 POOLED BILL IND:		YTD ASSESS:
STOP IND:	1ST PMT DUE:	00/00/00	N COMB BILL IND:	N	ORIG ASSESS:
\$0.00	PRIOR PMT DUE:	00/00/00	Y NAME ADDRESS IND:	1	WAIVED YTD:
NEW TODAY:	CURR PMT DUE:	00/00/00	FEE TYPE:	N	CURR DUE:
\$585.00	NEXT PMT DUE:	00/00/00	0 FEE CATEGORY:	MS	TOTAL DUE:
NEW THIS PERIOD:	START EARN:	02/07/07	4 REBATE IND:	N	PAID YTD:
\$0.00	GOOD DATE 1:	07/07/09	EARNINGS TERM:	360	EARN YTD:
CHG DEPOSIT IND:	GOOD DATE 2:	08/07/09	7 CAP FEE IND:	N	EARN MTD:
\$0.00			DISPLAY TO CUST:	Y	EARN LTD:
\$0.00			NOTE CALC IND:		PRIOR MNTH UNEARN
\$542.75					CURR MNTH UNEARN:
\$541.13					NEXT MNTH UNEARN:
\$539.50					UNPAID CAP FEES:
\$0.00					

	RLTD INDEX:	COMPONENT 1	COMPONENT 2	COMPONENT 3
	RATE:	000	000	000
	RLTD-KEY:	585.00	0.00000000	0.00000000
	RLTD-SEG:	00000040000	00000000000	00000000000

098 M&I MARSHALL AND ILSLEY BANK LOAN ACCOUNTING NOTE INQUIRY
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NOTE FEE PLAN:	M8 BILL FREQ:	MIN FEE:
ENTERED DATE:	03/17/09	
NUMBER:	1 BILL LEAD TIME:	0 MAX FEE:
ASSESS START:	03/17/09	
DELETE:	DETAIL BILL IND:	CURR ASSESS:
\$0.00	ASSESS END:	99/99/99
STOP IND:	0 POOLED BILL IND:	YTD ASSESS:
\$125.00	1ST PMT DUE:	00/00/00
NEW TODAY:	N COMB BILL IND:	N ORIG ASSESS:
\$125.00	PRIOR PMT DUE:	00/00/00
NEW THIS PERIOD:	Y NAME ADDRESS IND:	1 WAIVED YTD:
\$0.00	CURR PMT DUE:	00/00/00
CHG DEPOSIT IND:	FEE TYPE:	N CURR DUE:
\$125.00	NEXT PMT DUE:	00/00/00
CHG ACCT:	0 FEE CATEGORY:	MS TOTAL DUE:
\$125.00	START EARN:	00/00/00
EARN IND:	0 REBATE IND:	N PAID YTD:
\$0.00	GOOD DATE 1:	00/00/00
FINANCE IND:	EARNINGS TERM:	0 EARN YTD:
\$125.00	GOOD DATE 2:	00/00/00
NFEE BASIS:	7 CAP FEE IND:	N EARN MTD:
\$0.00	DISPLAY TO CUST:	Y EARN LTD:
\$0.00		

109147-Payment History
NOTE CALC IND: N

\$0.00
\$0.00
\$0.00
\$0.00

PRIOR MNTH UNEARN:
CURR MNTH UNEARN:
NEXT MNTH UNEARN:
UNPAID CAP FEES:

	COMPONENT 1	COMPONENT 2	COMPONENT 3
RLTD INDEX:	000	000	000
RATE:	125.00	0.00000000	0.00000000
RLTD-KEY:	00000040000	00000000000	00000000000
RLTD-SEG:			

NOTE FEE PLAN: M8 BILL FREQ: MIN FEE:
ENTERED DATE: 03/18/09
NUMBER: 2 BILL LEAD TIME: 0 MAX FEE:
ASSESS START: 03/18/09
DELETE: DETAIL BILL IND: CURR ASSESS:
\$0.00 ASSESS END: 99/99/99
STOP IND: 0 POOLED BILL IND: YTD ASSESS:
\$125.00 1ST PMT DUE: 00/00/00
NEW TODAY: N COMB BILL IND: N ORIG ASSESS:
\$125.00 PRIOR PMT DUE: 00/00/00
NEW THIS PERIOD: Y NAME ADDRESS IND: 1 WAIVED YTD:
\$125.00 CURR PMT DUE: 00/00/00
CHG DEPOSIT IND: FEE TYPE: N CURR DUE:
\$0.00 NEXT PMT DUE: 00/00/00
CHG ACCT: 0 FEE CATEGORY: MS TOTAL DUE:
\$0.00 START EARN: 00/00/00
EARN IND: 0 REBATE IND: N PAID YTD:
\$0.00 GOOD DATE 1: 00/00/00
FINANCE IND: EARNINGS TERM: 0 EARN YTD:
\$0.00 GOOD DATE 2: 00/00/00
NFEE BASIS: 7 CAP FEE IND: N EARN MTD:
\$0.00
\$0.00 DISPLAY TO CUST: Y EARN LTD:
\$0.00 NOTE CALC IND: N PRIOR MNTH UNEARN
\$0.00 CURR MNTH UNEARN:
\$0.00 NEXT MNTH UNEARN:
\$0.00 UNPAID CAP FEES:

	COMPONENT 1	COMPONENT 2	COMPONENT 3
RLTD INDEX:	000	000	000
RATE:	125.00	0.00000000	0.00000000
RLTD-KEY:	00000040000	00000000000	00000000000
RLTD-SEG:			

098

M&I MARSHALL AND ILSLEY BANK
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LOAN ACCOUNTING NOTE INQUIRY

NOTE FEE PLAN: 12 BILL FREQ: MIN FEE:
ENTERED DATE: 04/04/08
NUMBER: 1 BILL LEAD TIME: 0 MAX FEE:
ASSESS START: 04/04/08
DELETE: DETAIL BILL IND: CURR ASSESS:
Page 12

Exhibit 4

NOTICE OF ASSIGNMENT, SALE OR TRANSFER OF SERVICING RIGHTS

This notice is to inform you that effective August 16, 2009; the servicing of your mortgage loan is being assigned, sold, or transferred from M&I Marshall & Ilsley Bank, M&I Bank FSB, or Southwest Bank (M&I Bank) to Kondaur Capital Corporation. Servicing is defined as the right to collect payments from you on your mortgage loan.

The assignment, sale or transfer of the servicing of the mortgage loan does not affect any term or condition of the mortgage instruments, other than the terms directly related to the servicing of your loan.

Except in limited circumstances, the law requires that your present Servicer send you this notice at least 15 days before the effective date of transfer or at closing. Your new Servicer must also send you this notice no later than 15 days after this effective date or at closing.

Your present Servicer is M&I Bank. If you have any questions relating to the transfer of servicing from your present Servicer, call M&I Bank toll free at 1-888-464-5463, available 24 Hours.

Your new Servicer will be Kondaur Capital Corporation. The business address for your new Servicer is 1100 Town & Country Suite 1600, Orange, CA 92868. If you have any questions relating to the transfer of servicing to your new Servicer, please call toll free 1-877-737-8866, Monday through Friday from 8:30 a.m. – 5:30 p.m. PST.

The date that your present Servicer will stop accepting payments from you is August 16, 2009. Effective August 17, 2009, your new Servicer will start accepting payments from you. Begin making your checks payable to Kondaur Capital Corporation and mail your payment to PO Box 1449, Orange, CA 92856-1449.

You should also be aware of the following information, which is set out in more detail in Section 6 of the Real Estate Settlement Procedures Act (RESPA) (12 USC 2605):

During the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old Servicer before its due date may not be treated by the new Servicer as late, and a late fee may not be imposed on you.

Section 6 of RESPA (12 USC 2605) gives you certain consumer rights, if you send a "qualified written request" to your loan Servicer concerning the servicing of your loan, your Servicer must provide you with a written acknowledgment within 20 business days of receipt of your request. A "qualified written request" is a written correspondence, other than notice on a payment coupon or other payment medium supplied by the Servicer, which includes your name and account number, and your reasons for the request. Send written requests to 1100 Town & Country Rd, Suite 1600, Orange, CA 92868.

Not later than 60 business days after receiving your request, your Servicer must make any appropriate corrections to your account, and must provide you with a written clarification regarding any dispute. During the 60-business-day period, your Servicer may not provide information to a consumer reporting agency concerning any overdue payment related to such period or qualified written request, however, this does not prevent the Servicer from initiating foreclosure if proper grounds exist under the mortgage documents.

A business day is a day on which the offices of the business entity are open to the public for carrying on substantially all of its business functions.

Section 6 of RESPA also provides for damages and costs for individuals or classes of individuals in circumstances where Servicers are shown to have violated the requirements of that Section. You should seek legal advice if you believe your rights have been violated.

M&I Bank	July 31, 2009
Present Servicer	Date
Kondaur Capital Corporation	July 31, 2009
Future Servicer	Date

Exhibit 5



1100 Town & Country Rd.
Suite 1600
Orange, CA 92868
888.KONDAUR phone
877.KONDAUR fax

January 4, 2010

VIA EMAIL TO jmckinney@hushmail.com / ORIGINAL VIA OVERNIGHT MAIL

Mr. James McKinney
618 S. Wickiup Road
Apache Junction, AZ 85219

Re: Kondaur Loan No.: 109147
Secured Property: 608 S. Wickiup Road, Apache Junction, AZ 85219

Dear Mr. McKinney:

This is the response of Kondaur Capital Corporation ("Kondaur") to your letter dated December 24, 2009, which the Legal Department received on December 26, 2009 regarding the matter referenced above, which you characterized therein as a "qualified written request" ("QWR") pursuant to the Real Estate Settlement Procedures Act, 12 U.S.C. 2605(e) ("RESPA"). A true and correct copy of your letter is attached hereto as **Exhibit A**.

As we understand your letter, you state that you have "great doubts to whom [you] are dealing with." And, because a foreclosure sale of the aforementioned property is scheduled for tomorrow, January 5, 2010, you demand to immediately negotiate with the "Real Party in Interest" to this transaction. You further claim that you have issued six previous QWR inquiries to both Kondaur and prior servicers, but have purportedly not received a response to any of the inquiries.

In addition to the above, you list a series of thirteen questions to which you demand an answer. Lastly, you state:

"Kondaur has been silent for six, long unnecessary months now, since August 18th, 2009.

In response to your first inquiry regarding your alleged doubts about with whom you are working, it appears that you are simply asking questions to which you already know the answer. As you are very well aware, you have been working with Kondaur, the current Note Holder, for the last six (or more) months in order to resolve the delinquency of your mortgage. Nevertheless, attached hereto as **Exhibit B**, is a copy of the recorded Assignment of Mortgage from M&I Bank to Kondaur. Presumably, this is the proof that you are seeking which clearly reflects Kondaur as the "Real Party in Interest." Despite this documentation, which is of public record, you claim that Kondaur has failed to respond to each of your inquiries. Attached hereto collectively as **Exhibit C** are copies of our response letters dated August 18, 2009, August 24, 2009 and September 21, 2009, which were sent in response to your inquiries dated August 17, 2009, and August 18, 2009 (which included your letters titled "Notice of Loan Rescission" and "Qualified Written Request, Complaint, Dispute of Debt and Validation of Debt

KONDAUR/McKinney-00039

Letter, TILA Request.") Accordingly, contrary to your assertion, Kondaur has properly responded your two inquiries (rather than six).

The fact that Kondaur promptly responded to each of your inquiries (in addition to our many conversations via email and telephone) contradicts your claim that Kondaur has been silent for the last six months. You and your son, Mr. Dow McKinney, are well aware that Kondaur has been in consistent contact with you regarding our mutual desire to bring this matter to a close. Not only has Kondaur postponed the foreclosure sale on three occasions (September 9, 2009, October 20, 2009 and December 1, 2009), but we have also consistently negotiated and significantly reduced the amount we would accept as payment in full for you to refinance the property (with the lender of your choice) or through a note sale. As you know, throughout our numerous conversations both in email and via telephone over the last few months, and in our last and most recent effort, Kondaur drafted and issued to you a draft settlement agreement and mutual release (taking many of your demands into consideration) detailing our willingness to accept the sum of \$238,750.00 as payment in full on your loan which carries an existing unpaid principal balance of \$407,272.56. We spoke with you on numerous occasions to address your objections and questions you had regarding the draft, which included your concern that the majority of the verbiage in the agreement was that of Kondaur and did not include any of "your wording." In response to this, we informed you that the agreement itself was based on quality and not quantity. Regrettably, we were unable to come to a formal resolution as you simply would not accept the wording in the settlement concerning the reporting and issuance of a 1099 (debt forgiveness). (Despite our many efforts to explain the debt forgiveness act and the fact that you would not be liable for the deficiency, you would not accept the documentation we provided to you from the IRS website simply because of your statement that you do not trust the government, President Obama or his administration.) In an effort to avoid receiving a 1099, you indicated that New Start Mortgage ("New Start") would be willing to process the transaction as a note sale. However, in speaking with Mark Anderson of New Start, he stated unequivocally that he would not be able to process this as a note sale because you were only approved for a reverse short payoff refinance transaction and their office does not purchase notes. Although Kondaur has worked with you time after time by postponing the foreclosure sale date on three occasions, reducing the short payoff amount by over \$168,000.00, and trying to keep you in your property, you simply would not accept our offers because of your unreasonable concerns regarding the 1099 issue. As such, Kondaur has been given no other option than to move forward with the foreclosure sale scheduled for January 5, 2010.

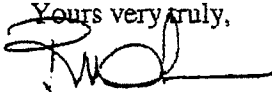
The series of questions that you listed in your letter (which could not be answered by one or more of the enclosed documents) have not been responded to and/or copies of requested documents have not been provided as those inquiries or requests for loan documents were not properly the subject of a QWR, or, as they are proprietary information, were not subject to disclosure in response to a QWR. Pursuant to 12 USC §2605(e), the information that may be obtained on a loan under a QWR is specifically limited to "information relating to the servicing of such loan... that includes a statement of the reasons for the belief of the borrower, to the extent applicable, that the account is in error or provides sufficient detail to the servicer regarding other information sought by the borrower" (emphasis added). Servicing, itself, is defined in 12 USC § 2605(i) as "receiving any scheduled periodic payments from a borrower pursuant to the terms of any loan..." Therefore, we respectfully decline to provide the responses or copies of requested documents which are not properly the subject of a QWR.

Mr. James McKinney
January 4, 2010
Page 3

Notwithstanding the foregoing, and pursuant to the attached Assignment of Mortgage, Kondaur Capital Corporation is the current note holder. Our address and telephone number are listed in the upper right corner of the first page of this letter.

Thank you for the opportunity to respond.

Yours very truly,



Paula Chastain
Legal Analyst
KONDAUR CAPITAL CORPORATION

Enclosures

THIS COMMUNICATION IS FROM A DEBT COLLECTOR BUT DOES NOT IMPLY THAT KONDAUR CAPITAL CORPORATION IS ATTEMPTING TO COLLECT MONEY FROM ANYONE WHOSE DEBT HAS BEEN DISCHARGED PURSUANT TO (OR WHO IS UNDER THE PROTECTION OF) THE BANKRUPTCY LAWS OF THE UNITED STATES; IN SUCH INSTANCES, IT IS INTENDED SOLELY FOR INFORMATIONAL PURPOSES AND DOES NOT CONSTITUTE A DEMAND FOR PAYMENT.

KONDAUR/McKinney-00041

Faxed 12/24/09 to: Kondaur Capital Corporation 1 (877) 566-3287

JAMES MCKINNEY
618 S. Wickenburg Road
Apache Junction, AZ 85219
December 24, 2009

Kondaur Capital Corporation
Kondaur Venture X, LLC, by:
Kondaur Capital Trust Series 2009-3, et. al.
all hereinafter "Kondaur"

Paula Chastain
Jon Daurio
Peter Bai
Mike Perry
1100 Town & Country, Suite 1600
Orange, CA 92868

Deutsch Bank
Noted in at least one of Kondaur's Delaware corporate filings.
1761 E. St., Andrew's Place
Santa Ana, CA 92705-4934

Re: Account #: 109147, also known / formerly-known-as M & I #35662154 dated
February 7, 2007

Notice to the Principal is Notice to the Agent and Notice to the Agent is Notice to the Principal.

Kondaur Capital Corporation, Kondaur, and Deutsch Bank and all listed above:

Again, as I reasonably noted in earlier letters, I have great doubts to whom I am dealing with. Since you have a foreclosure scheduled for January 5th, 2010, I demand to immediately negotiate with the Real Party in Interest to this transaction, not just an F.D.C.P.A. debt collector - servicer.

Peter Bai told us that Kondaur Servicing Corporation is just an "asset manager" and not a Servicer. Asset manager for whom?

This is my 7th QWR to this account, none of which have been answered, by the previous servicers, nor by Kondaur in purposeful repeated violations of both R.E.S.P.A. and the F.D.C.P.A.

I request in addition to my earlier questions, actual real answers to the following:

1. Is this account a part of, or has ever been a Mortgage Backed Security (M.B.S.)?

EXHIBIT A

KONDAUR/McKinney-00042

2. What is the name of this Security or Securities?
3. What is the contact name, address, and telephone number of the Security(ies)?
4. Is this account held by a Pool of Investor(s)?
5. What is the name of the Pool?
6. What is the contact name, address, and telephone number of the Pool?
7. Who is the claimed Real Party in Interest to this account?
8. What date did you transfer *consideration* for this Note to any previous Real Party in Interest?
9. Who is the claimed Holder in Due Course to this account?
10. What date did they transfer consideration for this title to any previous Holder in Due Course?
11. What records does Kondaur Capital Corporation and other Kondaur entities above, have about the default of the note?
12. How does Kondaur advertisement on the internet for loans which include "hyper-default", involve this account? See: <http://www.kondaur.com/home.aspx>
13. What records does Kondaur Capital Corporation and other Kondaur entities above, have about the former dishonor(s) of the note, when it was serviced by M&I and following?

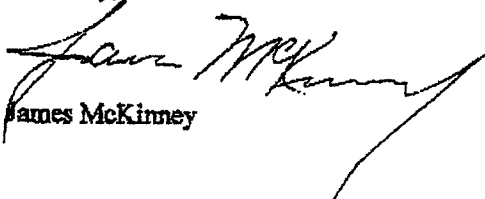
Due to the emotional distress, and economic losses from you attempting to foreclose by home, send the answers to each of these pertinent questions immediately.

Silence can only be equated with fraud where there is a legal or moral duty to speak, or where an inquiry left unanswered would be intentionally misleading - U.S. v. Tweel, 550 F.2d 297, 299 (5th Cir. 1977). Notification of legal responsibility is "the first essential of due process of law." Connally v. General Construction Co., 269 U.S. 385, 391.

Kondaur has been silent for six long, unnecessary months now, since August 18th, 2009.

I demand that each of you answer these questions, and postpone your foreclosure date for a reasonable amount of days *after* you finally answer these questions in their entirety, so I may respond accurately and completely to the court and jury in my forthcoming amended complaint.

Sincerely,


James McKinney

44 Matches found

* Required Field

* Entity Name

or File Number:

This field is not case sensitive.

FILE NUMBER	ENTITY NAME
4378689	<u>KONDAUR CAPITAL CORPORATION</u>
4205358	<u>KONDAUR CAPITAL, LLC</u>
4628979	<u>KONDAUR CAPITAL TRUST SERIES 2008-1</u>
4636981	<u>KONDAUR CAPITAL TRUST SERIES 2008-2</u>
4638978	<u>KONDAUR CAPITAL TRUST SERIES 2008-3</u>
4687885	<u>KONDAUR CAPITAL TRUST SERIES 2009-1</u>
4715615	<u>KONDAUR CAPITAL TRUST SERIES 2009-3</u>
4547551	<u>KONDAUR VENTURES II B1, L.L.C.</u>
4586453	<u>KONDAUR VENTURES III B1, L.L.C.</u>
4568448	<u>KONDAUR VENTURES III, L.L.C.</u>
4566455	<u>KONDAUR VENTURES III OFFSHORE, L.L.C.</u>
4566449	<u>KONDAUR VENTURES III OFFSHORE REO 1, L.L.C.</u>
4545703	<u>KONDAUR VENTURES II, L.L.C.</u>
4549515	<u>KONDAUR VENTURES II OFFSHORE, L.L.C.</u>
4558190	<u>KONDAUR VENTURES II OFFSHORE REO 1, L.L.C.</u>
4530019	<u>KONDAUR VENTURES I, LLC</u>
4587546	<u>KONDAUR VENTURES IV B1, L.L.C.</u>
4587545	<u>KONDAUR VENTURES IV, L.L.C.</u>
4587547	<u>KONDAUR VENTURES IV OFFSHORE, L.L.C.</u>
4587548	<u>KONDAUR VENTURES IV OFFSHORE REO 1, L.L.C.</u>
4695781	<u>KONDAUR VENTURES IX B1, L.L.C.</u>
4695758	<u>KONDAUR VENTURES IX, L.L.C.</u>
4695769	<u>KONDAUR VENTURES IX OFFSHORE, L.L.C.</u>
4695772	<u>KONDAUR VENTURES IX OFFSHORE REO 1, L.L.C.</u>
4612012	<u>KONDAUR VENTURES V B1, L.L.C.</u>
4634842	<u>KONDAUR VENTURES VI B1, L.L.C.</u>
4637111	<u>KONDAUR VENTURES VII B1, L.L.C.</u>
4682513	<u>KONDAUR VENTURES VIII B1, L.L.C.</u>

4682510	<u>KONDAUR VENTURES VIII, L.L.C.</u>
4682515	<u>KONDAUR VENTURES VIII OFFSHORE, L.L.C.</u>
4682517	<u>KONDAUR VENTURES VIII OFFSHORE REQ 1, L.L.C.</u>
4637109	<u>KONDAUR VENTURES VII, L.L.C.</u>
4637115	<u>KONDAUR VENTURES VII OFFSHORE, L.L.C.</u>
4637116	<u>KONDAUR VENTURES VII OFFSHORE REQ 1, L.L.C.</u>
4634838	<u>KONDAUR VENTURES VI, L.L.C.</u>
4634846	<u>KONDAUR VENTURES VI OFFSHORE, L.L.C.</u>
4634851	<u>KONDAUR VENTURES VI OFFSHORE REQ 1, L.L.C.</u>
4611696	<u>KONDAUR VENTURES V, L.L.C.</u>
4611697	<u>KONDAUR VENTURES V OFFSHORE, L.L.C.</u>
4611699	<u>KONDAUR VENTURES V OFFSHORE REQ 1, L.L.C.</u>
4711830	<u>KONDAUR VENTURES X B1, L.L.C.</u>
4711826	<u>KONDAUR VENTURES X, L.L.C.</u>
4711834	<u>KONDAUR VENTURES X OFFSHORE, L.L.C.</u>
4711838	<u>KONDAUR VENTURES X OFFSHORE REQ 1, L.L.C.</u>

127-47

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(18)

SECURITY TITLE AGENCY

14-83403

Record and Return to:

KONDAUR CAPITAL CORPORATION
1100 TOWN & COUNTRY ROAD
SUITE 1600
ORANGE, CA 92868



OFFICIAL RECORDS OF
PINEL COUNTY RECORDER
LAURA DEAN-LYLTLE

DATE/TIME: 09/02/09 1624
FEE: \$14.00
PAGES: 2
FEE NUMBER: 2009-091736

ASSIGNMENT OF DEED OF TRUST

FOR VALUE RECEIVED, M&I MARSHALL & ILSLEY BANK, a Wisconsin Corporation, its successors and assigns, hereby assigns and transfers to KONDAUR CAPITAL CORPORATION, its successors and assigns, all its right title and interest in and to a certain mortgage executed by, JAMES H MCKINNEY, AN UNMARRIED MAN, Dated FEBRUARY 7, 2007, to M&I MARSHALL & ILSLEY BANK, and recorded on FEBRUARY 9, 2007, IN DOCUMENT NUMBER 2007-017572 of Official Records in the Office of the County Recorder of PINEL, which encumbers the following described property, to-wit:

Legal Description:
SEE ATTACHED LEGAL

Dated this 4TH Day of AUGUST, 2009.

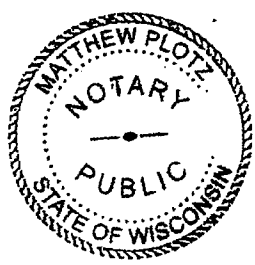
M&I MARSHALL & ILSLEY BANK

BY: [Signature]
John A. Muroni Vice President

ATTEST: [Signature]
Cheri M. Mann, Assistant Vice President

STATE OF WISCONSIN)
County of Waukesha) SS.

The foregoing Assignment of Deed of Trust was sworn to, subscribed and acknowledged before me this 4th day of August, 2009, by John A. Muroni and Cheri M. Mann, who is personally know to me to be the Vice President and Assistant Vice President of M&I MARSHALL & ILSLEY BANK, and that said instrument was signed on behalf of said corporation.



[Signature]
MATTHEW PLOTZ, Notary Public
My commission will expire October 16, 2011

098xxxx2154-40000
This instrument was drafted by:
CAROLYN KRUEGER

EXHIBIT B

KONDAUR/McKinney-00046

PARCEL A, OF RECORD OF SURVEY, RECORDED IN BOOK 17 OF SURVEYS, PAGE 041
AND BOOK 17 OF SURVEYS, PAGE 205, RECORDS OF PINAL COUNTY, ARIZONA BEING
THE NORTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE
SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 1
NORTH, RANGE 8 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, PINAL
COUNTY, ARIZONA; EXCEPT ALL THE COAL, OIL, GAS AND OTHER MINERAL DEPOSITS
AS RESERVED UNTO THE UNITED STATES OF AMERICA IN THE PATENT TO SAID LAND.



1100 Town & Country Rd
Suite 1000
Orange, CA 92668
888.KONDAUR phone
577.KONDAUR fax

September 21, 2009

Mr. James McKinney
618 S. Wickiup Road
Apache Junction, AZ 85219

Re: Loan No.: 109147
Secured Property: 618 S. Wickiup Road, Apache Junction, AZ 85219

Dear Mr. McKinney:

This is the response of Kondaur Capital Corporation ("Kondaur") to your letter dated August 18, 2009, which the Legal Department received on August 20, 2009 regarding the matter referenced above, which you characterized therein as a "qualified written request" ("QWR") pursuant to the Real Estate Settlement Procedures Act, 12 U.S.C. 2605(e) ("RESPA"). A true and correct copy of your letter is attached hereto as Exhibit 1.

Pursuant to your requests in Exhibit 1, we have attached hereto collectively as Exhibit 2 copies of the following documents, incorporated by reference herein, which also provide any "validation" you have requested.

- * Payment history
- * Copies of Note and Mortgage
- * Copy of the Final Settlement Statement
- * Copy of the signed ARM Loan Modification Agreement dated March 19, 2008
- * Goodbye Letter
- * Hello Letter

Please be advised that remainder of your requests/inquiries (those which could not be answered by one or more of the enclosed documents) have not been responded to and/or copies of requested documents have not been provided as those inquiries or requests for loan documents were not properly the subject of a QWR or, as they are proprietary information, were not subject to disclosure in response to a QWR. Pursuant to 12 USC §2605(e), the information that may be obtained on a loan under a QWR is specifically limited to "information relating to the servicing of such loan... that includes a statement of the reasons for the belief of the borrower, to the extent applicable, that the account is in error or provides sufficient detail to the servicer regarding other information sought by the borrower" (emphasis added). Servicing, itself, is defined in 12 USC § 2605(i) as "receiving any scheduled periodic payments from a borrower pursuant to the terms of any loan..". Therefore, we respectfully decline to provide the responses or copies of requested documents which are not properly the subject of a QWR.

Should you have any questions, please do not hesitate to contact our office.

Yours very truly,

KONDAUR CAPITAL CORPORATION
encl.

This communication is from a debt collector but does not imply that Kondaur Capital Corporation is attempting to collect money from anyone whose debt has been discharged pursuant to, or who is under the protection of, the bankruptcy laws of the United States; in such instances, it is intended solely for informational purposes and does not constitute a demand for payment.

KONDAUR/McKinney-00048
ENCLOSURE

JAMES MCKINNEY
618 S. Wickiup Road
Apache Junction, AZ 85219
August 18th, 2009

Kondaur Capital Corporation
QWR Department
1100 Town & Country, Suite 1600
Orange, CA 92868

**QUALIFIED WRITTEN REQUEST, COMPLAINT, DISPUTE OF DEBT AND
VALIDATION OF DEBT LETTER, TILA REQUEST**

This letter is a "qualified written request" (QWR) in compliance with and under the Real Estate Settlement Procedures Act, 12 U.S.C. Section 2605(e), and Regulation X at 24 C.F.R. 3500, and The Gramm Leach Bliley Act.

Re: Account #: 109147, also known / formerly known as M & I #35662154 hereinafter 'Loan' dated February 7, 2007 (hereinafter the subject 'loan' and is the reference for all questions and requests described below).

Dear Kondaur Capital Corporation:

I am writing to you to complain about the former servicing of this mortgage and my need for understanding and clarification of various sale, transfer, funding source, legal and beneficial ownership, charges, credits, debits, transactions, reversals, actions, payments, analyses, and records related to the servicing of this account from its origination to the present date. This loan was Rescinded on June 4th, 2009 due to the originator's material breaches, and the former Servicer may not have informed you of their lengthy pending legal disputes and claims against them in this file.

To date, the documents and information I have, that M & I has sent me, and the conversations with their service representatives have been unproductive and have not answered my questions.

Needless to say, I am very concerned, with all the news lately regarding the stories of predatory lending. Specifically this former Servicer, M & I bank left me feeling that there is something they were trying to hide by their evasiveness and less than misleading letters. I worry that potential fraudulent and deceptive practices by unscrupulous mortgage brokers; sales and transfers of mortgage servicing rights; deceptive and fraudulent servicing practices to enhance balance sheets; deceptive, abusive and fraudulent accounting tricks and practices may have also negatively affected any credit rating, mortgage account and/or the debt or payments that I am currently, or may be legally obligated to.

EXHIBIT _____
KONDAUR/McKinney-00049

I am also very concerned with M & I's utter failure to specifically acknowledge within 20 days, and answer within 60 business days the actual questions on my previous QWR's, violating 12 USC § 2605, and wholly lacking any real good faith to my honest questions and concerns, since they were the originators of the original transaction.

Also, my recent review of M & I's 8-K and 10-K SEC filings show significant dealings in securitized, resold, repackaged securities often misrepresented as 'mortgages'.

Since you, perhaps unwittingly, purchased into a Rescinded void security interest and/or security, I have to hereby reasonably demand absolute first hand evidence from you of the original uncertificated or certificated security regarding account #109147. In the event you do not supply me with the very security, or proof otherwise, it will be a positive confirmation on your part that the originator M & I never really created and owned one.

I also hereby demand that a chain of transfer from you to wherever the security is now be promptly sent to me as well. Absent the actual evidence of the security, I have no choice but to dispute the validity of your lawful ownership, funding, entitlement right, and the current debt you say I owe. By debt I am referring to the principal balance you claim I owe; the calculated monthly payment, calculated escrow payment and any fees claimed to be owed by you or any trust or entity you may service or sub-service for.

To independently validate this debt, I need to conduct a complete exam, audit, review and accounting of this mortgage account from its inception through the present date. Upon receipt of this letter, please refrain from reporting any negative credit information (if any) to any credit-reporting agency until you respond to each of the requests.

I also request that you conduct your own investigation and audit of this account since its inception to validate the debt you currently claim I owe. I would like you to validate the debt so that it is accurate to the penny!

Please do not rely on previous servicing companies or originators records, assurances or indemnity agreements and refuse to conduct a full audit and investigation of this account.

I understand that potential abuses by you or previous servicing companies could have deceptively, wrongfully, unlawfully, and/or illegally:

Increased the amounts of monthly payments;

Increased the principal balance I owe;

Increased the escrow payments;

Increased the amounts applied and attributed toward interest on this account;

Decreased the proper amounts applied and attributed toward the principal on this account;
and/or

Assessed, charged and/or collected fees, expenses and miscellaneous charges I am not legally obligated to pay under this mortgage, note and/or deed of trust.

I request you insure that I have not been the victim of such predatory servicing and lending practices.

To insure this, I have authorized a thorough review, examination, accounting, and audit of mortgage account #109147 by mortgage auditing and predatory servicing or lending experts. This exam and audit will review this mortgage account file from the date of initial contact, application and the origination of this account to the present date written above.

Again, this is a Qualified Written Request under the Real Estate Settlement Procedures Act, codified as Title 12 section 2605(e) of the United States Code as well as a request under the Truth In Lending Act, 15 U.S.C. section 1601. RESPA provides substantial penalties and fines for non-compliance or failure to answer my questions provided in this letter within sixty (60) days of its receipt.

In order to conduct the examination and audit of this loan, I need to have full and immediate disclosure including copies of all pertinent information regarding this loan. The documents requested and answers to my questions are needed by myself and others to ensure that this loan:

- 1- Was originated in lawful compliance with all federal and state laws, regulations including, but not limited to Title 62 of the Revised Statutes, RESPA, TILA, Fair Debt Collection Practices Act, HOEPA and other laws;
- 2- That the origination and/or any sale or transfer of this account or monetary instrument, was conducted in accordance with proper laws and was a lawful sale with complete disclosure to all parties with an interest;
- 3- That you disclose the claimed Holder in Due Course of the monetary instrument/deed of trust/asset is holding such note in compliance with statutes, State and Federal laws and is entitled to the benefits of payments;
- 4- That you disclose the Real Party of Interest of the monetary instrument/deed of trust/asset is holding such note in compliance with statutes, State and Federal laws and is entitled to the benefits of payments;
- 5- That you disclose all former Real Party of Interest(s) of the monetary instrument/deed of trust/asset is holding such note in compliance with statutes, State and Federal laws and is entitled to the benefits of payments;
- 6- That you disclose any insurance, any PMI received by any party to this transaction at any time since its inception, and was/is entitled to the benefits of payments, dates when they received all payments, and amounts;
- 7- That you disclose any insurance, any Credit Default Swaps received, created, or paid by any party to this transaction at any time since its inception, and was/is entitled to the benefits of payments, dates when they received all payments, and amounts;

8-That all good faith and reasonable disclosures of transfers, sales, Power of Attorney, monetary instrument ownership, entitlements, full disclosure of actual funding source, terms, costs, commissions, rebates, kickbacks, fees etc. were and still are properly disclosed to me, including but not limited to the period commencing with the original loan solicitation through and including any parties, instruments, assignments, letters of transmittal, certificates of asset backed securities and any subsequent transfer thereof;

9-That each servicers and/or sub-servicers of this mortgage has serviced this mortgage in accordance with statute, laws and the terms of mortgage, monetary instrument/deed of trust, including but not limited to all accounting or bookkeeping entries commencing with the original loan solicitation through and including any parties, instruments, assignments, letters of transmittal, certificates of asset backed securities and any subsequent transfer thereof;

10-That each servicers and/or sub-servicers of this mortgage has serviced this mortgage in compliance with local, state and federal statutes, laws and regulations commencing with the original loan solicitation through and including any parties, instruments, assignments, letters of transmittal, certificates of asset backed securities and any subsequent transfer thereof ;

11-That this mortgage account has been credited, debited, adjusted, amortized and charged correctly and disclosed fully commencing with the original loan solicitation through and including any parties, instruments, assignments, letters of transmittal, certificates of asset backed securities and any subsequent transfer thereof ;

12-That interest and principal have been properly calculated and applied to this loan;

13-That any principal balance has been properly calculated, amortized and accounted for;

14-That no charges, fees or expenses, not obligated by me in any agreement, have been charged, assessed or collected from this account or any other related account arising out of the subject loan transaction.

In order to validate this debt and audit this account, I need copies of pertinent documents to be provided to me. I also need answers, certified in writing, to various servicing questions. For each record kept on computer or in any other electronic file or format, please provide a paper copy of all information in each field or record in each computer system, program or database used by you that contains any information on this account or my name.

As such, please send to me, at the address above, copies of the documents requested below as soon as possible. Please also provide copies, front and back, of the following documents regarding account #109147:

1-Any certificated or uncertificated security used for the funding of this account;

2-Any and all "Pool Agreement(s)" or "servicing agreements" between the nominal lender at the loan closing and any party or parties who could claim an interest in the loan closing or documents pertaining thereto and any government sponsored entity, hereinafter GSE or other party;

3-Any and all "Deposit Agreement(s)" between the nominal lender at the loan closing and any party or parties who could claim an interest in the loan closing or documents pertaining thereto and any GSE or other party;

4-Any and all "Servicing Agreement(s)" between the nominal lender at the loan closing and any party or parties who could claim an interest in the loan closing or documents pertaining thereto and any GSE or other party;

5-Any and all "Custodial Agreement(s)" between the nominal lender at the loan closing and any party or parties who could claim an interest in the loan closing or documents pertaining thereto and any GSE or other party;

6-Any and all "Master Purchasing Agreement(s)" between the nominal lender at the loan closing and any party or parties who could claim an interest in the loan closing or documents pertaining thereto and any GSE or other party;

7-Any and all "Issuer Agreement(s)" between the nominal lender at the loan closing and any party or parties who could claim an interest in the loan closing or documents pertaining thereto and any GSE or other party;

8-Any and all "Commitment to Guarantee" agreement(s) between the nominal lender at the loan closing and any party or parties who could claim an interest in the loan closing or documents pertaining thereto and any GSE or other party;

9-Any and all "Release of Document" agreement(s) between the nominal lender at the loan closing and any party or parties who could claim an interest in the loan closing or documents pertaining thereto and any GSE or other party;

10-Any and all "Master Agreement for Servicer's Principal and Interest Custodial Account" between the nominal lender at the loan closing and any party or parties who could claim an interest in the loan closing or documents pertaining thereto and any GSE or other party;

11-Any and all "Servicer's Escrow Custodial Account" between the nominal lender at the loan closing and any party or parties who could claim an interest in the loan closing or documents pertaining thereto and any GSE or other party;

12-Any and all "Release of Interest" agreement(s) between the nominal lender at the loan closing and any party or parties who could claim an interest in the loan closing or documents pertaining thereto and any GSE or other party;

13-Any Trustee agreement(s) between the nominal lender at the loan closing and any party or parties who could claim an interest in the loan closing or documents pertaining thereto and trustee(s) regarding this account or pool accounts with any GSE or other party;

Please also send me copies, front and back, of:

1-Any documentation evidencing any trust relationship regarding the Mortgage/Deed of Trust and any Note in this matter;

2-Any and all document(s) establishing any Trustee of record for the Mortgage/Deed of Trust and any Note;

3-Any and all document(s) establishing the date of any appointment of Trustee Mortgage/Deed of Trust and any Note, including any and all assignments or transfers or nominees of any substitute trustees(s);

4-Any and all document(s) establishing any Grantor for this Mortgage/Deed of Trust and any Note;

5-Any and all document(s) establishing any Grantee for this Mortgage/Deed of Trust and any Note;

6-Any and all document(s) establishing any Beneficiary for this Mortgage/Deed of Trust and any Note;

7-Any documentation evidencing the Mortgage/Deed of Trust is not a constructive trust or any other form of trust;

8-All data, information, notations, text, figures and information contained in your mortgage servicing and accounting computer systems including, but not limited to Alltel or Fidelity CPI system, or any other similar mortgage servicing software used by you, any servicers, or sub-servicers of this mortgage account from the inception of this account to the date written above.

9-All descriptions and legends of all Codes used in your mortgage servicing and accounting system so the examiners and auditors and experts retained to audit and review this mortgage account may properly conduct their work.

10-All assignments, transfers, allonge, or other documents evidencing a transfer, sale or assignment of this mortgage, deed of trust, monetary instrument or other document that secures payment by me to this obligation in this account from the inception of this account to the present date.

11-All records, electronic or otherwise, of assignments of this mortgage, monetary instrument or servicing rights to this mortgage including any such assignments on MERS.

12-All deeds in lieu, modifications to this mortgage, monetary instrument or deed of trust from the inception of this account to the present date.

13-The front and back of each and every canceled check, money order, draft, debit or credit notice issued to any servicers of this account for payment of any monthly payment, other payment, escrow charge, fee or expense on this account.

14-All escrow analyses conducted on this account from the inception of this account until the date of this letter.

15-The front and back of each and every canceled check, draft or debit notice issued for payment of closing costs, fees and expenses listed on any and all disclosure statements including, but not limited to, appraisal fees, inspection fees, title searches, title insurance fees, credit life insurance premiums, hazard insurance premiums, commissions, attorney fees, points, etc.

16-Front and back copies of all payment receipts, checks, money orders, drafts, automatic debits and written evidence of payments made by others or me on this account.

17-All letters, statements and documents sent to me by your company.

18-All letters, statements and documents sent to me by agents, attorneys or representatives of your company.

19-All letters, statements and documents sent to me by previous servicers, sub-servicers or others in your account file or in your control or possession or in the control or possession of any affiliate, parent company, agent, sub-servicers, servicers, attorney or other representative of your company.

20-All letters, statements and documents contained in this account file or imaged by you, any servicers or sub-servicers of this mortgage from the inception of this account to the present date.

21-All electronic transfers, assignments and sales of the note/asset, mortgage, deed of trust or other security instrument.

22-All copies of property inspection reports, appraisals, BPOs and reports done on my property.

23-All invoices for each charge such as inspection fees, BPOs, appraisal fees, attorney fees, insurance, taxes, assessments or any expense which has been charged to this mortgage account from the inception of this account to the present date.

24-All checks used to pay invoices for each charge such as inspection fees, BPOs, appraisal fees, attorney fees, insurance, taxes, assessments or any expense which has been charged to this account from the inception of this account to the present date.

25-All agreements, contracts and understandings with vendors that have been paid for any charge on this account from the inception of this account to the present date.

26-All account servicing records, payment payoffs, payoff calculations, ARM audits, interest rate adjustments, payment records, transaction histories, account histories, accounting records, ledgers, and documents that relate to the accounting of this account from the inception of this account to the present date.

27-All account servicing transaction records, ledgers, registers and similar items detailing how this account has been serviced from the inception of this account to the present date.

Further, in order to conduct the audit and review of this account, and to determine all proper amounts due, I need the following answers to questions concerning the servicing and accounting of this mortgage account from its inception to the present date. Accordingly, please provide me, in writing, the answers to the following questions:

In regards to Account Accounting and Servicing Systems:

1-Please identify for me each account accounting and servicing system used by you and any sub-servicers or previous servicers from the inception of this account to the present date so that experts can decipher the data provided.

2-For each account accounting and servicing system identified by you and any sub-servicers or previous servicers from the inception of this account to the present date, please provide the name and address of the company that designed and sold the system.

3-For each account accounting and servicing system used by you and any sub-servicers or previous servicers from the inception of this account to the present date, please provide the complete transaction code list for each system so that I, and others can adequately audit this account.

In regards to Debits and Credits:

1-In a spreadsheet form or in letter form in a columnar format, please detail for me each and every credit on this account from the date such credit was posted to this account as well as the date any credit was received.

2- In a spreadsheet form or in letter form in a columnar format, please detail for me each and every debit on this account from the date such debit was posted to this account as well as the date any debit was received.

3-For each debit and credit listed, please provide me with the definition for each corresponding transaction code you utilize.

4-For each transaction code, please provide the master transaction code list used by you or previous servicers.

In regards to Mortgage and Assignments:

1-Has each sale, transfer or assignment of this mortgage, monetary instrument, deed of trust or any other instrument I executed to secure this debt been recorded in the county property records in the county and state in which my property is located from the inception of this account to the present date? Yes or No?

2-If not, why?

3-Is your company the servicer of this mortgage account or the holder in due course and beneficial owner of this mortgage, monetary instrument and/or deed of trust?

4-Have any sales, transfers or assignments of this mortgage, monetary instrument, deed of trust or any other instrument I executed to secure this debt been recorded in any electronic fashion such as MERS or other internal or external recording system from the inception of this account to the present date? Yes or No?

5-If yes, please detail for me the names of the seller, purchaser, assignor, assignee or any holder in due course to any right or obligation of any note, mortgage, deed of trust or security instrument I executed securing the obligation on this account that was not recorded in the county records where my property is located whether they be mortgage servicing rights or the beneficial interest in the principal and interest payments.

In regards to Attorney Fees:

For purposes of the questions below dealing with attorney fees, please consider attorney fees and legal fees to be one in the same.

1-Have attorney fees ever been assessed to this account from the inception of this account to the present date? Yes or No?

2-If yes, please detail each separate assessment, charge and collection of attorney fees to this account from the inception of this account to the present date and the date of such assessments to this account.

3-Have attorney fees ever been charged to this account from the inception of this account to the present date? Yes or No?

4- If yes, please detail each separate charge of attorney fees to this account from the inception of this account to the present date and the date of such assessments to this account.

5- Have attorney fees ever been collected from this account from the inception of this account to the present date? Yes or No?

6- If yes, please detail each separate collection of attorney fees to this account from the inception of this account to the present date and the date of such assessments to this account.

7- Please provide me with the name and address of each attorney or law firm that has been paid any fees or expenses related to this account from the inception of this account to the present date.

8- Please identify for me in writing the provision, paragraph, section or sentence of any note, mortgage, deed of trust or any agreement I signed that authorized the assessment, charge or collection of attorney fees.

9- Please detail and list for me in writing each separate attorney fee assessed from this account and for which each corresponding payment period or month such fee was assessed from the inception of this account to the present date.

10- Please detail and list for me in writing each separate attorney fee collected from this account and for which each corresponding payment period or month such fee was collected from the inception of this account to the present date.

11- Please detail and list for me in writing any adjustments in attorney fees assessed and on what date such adjustment was made and the reason for such adjustment.

12- Please detail and list for me in writing any adjustments in attorney fees collected and on what date such adjustment was made and the reason for such adjustment.

13- Has interest been charged on any attorney fees assessed or charged to this account? Yes or No?

14- Is interest allowed to be assessed or charged on attorney fees charged or assessed to this account? Yes or No?

15- How much total in attorney fees have been assessed to this account from the inception to the present date?

16- How much total in attorney fees have been collected from this account from the inception to the present date?

17- How much total in attorney fees have been charged to this account from the inception to the present date?

18-Please send me copies of all invoices and detailed billing statements from any law firm or attorney that has billed such fees that have been assessed or collected from this account from the inception to the present date.

In regards to Suspense/Unapplied Accounts:

For purposes of this section, please treat the term suspense account and unapplied account as one in the same.

1-Has there been any suspense or unapplied account transactions on this account from the inception of this account until the present date? Yes or No?

2-If yes, please explain the reason for each and every suspense transaction that occurred on this account. If no, please skip the questions in this section dealing with suspense and unapplied accounts.

3-In a spreadsheet or in letter form in a columnar format, please detail for me each and every suspense or unapplied transaction, both debits and credits that has occurred on this account from the inception of this account to the present date.

In regards to late fees:

For purposes of my questions below dealing with late fees, please consider the terms late fees and late charges to be one in the same.

1-Have you reported the collection of late fees on this account as interest in any statement to me or to the IRS? Yes or No?

2-Has any previous servicers or sub-servicers of this mortgage reported the collection of late fees on this account as interest in any statement to me or to the IRS? Yes or No?

3-Do you consider the payment of late fees as liquidated damages to you for not receiving payment on time? Yes or No?

4-Are late fees considered interest? Yes or No?

5-Please detail for me in writing what expenses and damages you incurred for any payment I made that was late.

6-Were any of these expenses or damages charged or assessed to this account in any other way? Yes or No?

7-If yes, please describe what expenses or damages were charged or assessed to this account.

8-Please describe for me in writing what expenses you or others undertook due to any payment I made, which was late.

9- Please describe for me in writing what damages you or others undertook due to any payment I made, which was late.

10-Please identify for me in writing the provision, paragraph, section or sentence of any note, mortgage, deed of trust or any agreement I signed that authorized the assessment or collection of late fees.

11-Please detail and list for me in writing each separate late fee assessed to this account and for which corresponding payment period or month such late fee was assessed from the inception of this account to the present date.

12-Please detail and list for me in writing each separate late fee collected from this account and for which corresponding payment period or month such late fee was collected from the inception of this account to the present date.

13-Please detail and list for me in writing any adjustments in late fees assessed and on what date such adjustment was made and the reason for such adjustment.

14-Has interest been charged on any late fee assessed or charged to this account? Yes or No?

15-Is interest allowed to be assessed or charged on late fees to this account? Yes or No?

16-Have any late charges been assessed to this account? Yes or No?

17-If yes, how much in total late charges have been assessed to this account from the inception of this account to the present date?

18-Please provide me with the exact months or payment dates you or other previous servicers or sub-servicers of this account claim I have been late with a payment from the inception of this account to the present date.

19-Have late charges been collected on this account from the inception of this account to the present date? Yes or No?

20-If yes, how much in total late charges have been collected on this account from the inception of this account to the present date?

In regards to Property Inspections:

For the purpose of this section property inspection and inspection fee refer to any inspection of property by any source and any related fee or expense charged, assessed or collected for such inspection.

1-Have any property inspections been conducted on my property from the inception of this account to the present date? Yes or No?

2-If your answer is no, you can skip the rest of the questions in this section concerning property inspections.

3-If yes, please tell me the date of each property inspection conducted on my property that is the secured interest for this mortgage, deed of trust or note.

4-Please tell me the price charged for each property inspection.

5-Please tell me the date of each property inspection.

6-Please tell me the name and address of each company and person who conducted each property inspection on my property.

7-Please tell me why property inspections were conducted on my property.

8-Please tell me how property inspections are beneficial to me.

9-Please tell me how property inspections are protective of my property.

10-Please explain to me your policy on property inspections.

11-Do you consider the payment of inspection fees as a cost of collection? Yes or No?

12-If yes, why?

13-Do you use property inspections to collect debts? Yes or No?

14-Have you used any portion of the property inspection process on my property to collect a debt or inform me of a debt, payment or obligation I owe? Yes or No?

15-If yes, please answer when and why?

16-Please identify for me in writing the provision, paragraph, section or sentence of any note, mortgage, deed of trust or any agreement I signed that authorized the assessment or collection of property inspection fees.

17-Have you labeled in any record or document sent to me a property inspection as a miscellaneous advance? Yes or No?

18-If yes, why?

19-Have you labeled in any record or document sent to me a property inspection as a legal fee or attorney fee? Yes or No?

20-If yes, why?

21-Please detail and list for me in writing each separate inspection fee assessed to this account and for which corresponding payment period or month such fee was assessed from the inception of this account to the present date.

22- Please detail and list for me in writing each separate inspection fee collected from this account and for which corresponding payment period or month such fee was collected from the inception of this account to the present date.

23-Please detail and list for me in writing any adjustments in inspection fees assessed and on what date such adjustment was made and the reasons for such adjustment?

24- Please detail and list for me in writing any adjustments in inspection fees collected and on what date such adjustment was made and the reasons for such adjustment?

25-Has interest been charged on any inspection fees assessed or charged to this account? Yes or No?

26-If yes, when and how much was charged?

27-Is interest allowed to be charged on inspection fees charged or assessed to this account? Yes or No?

28-How much total in inspection fees has been assessed to this account from the inception of this account to the present date?

29-How much total in inspection fees has been collected on this account from the inception of this account to the present date?

30-Please forward to me copies of all property inspections made on my property in this mortgage account file.

31-Has any fee charged or assessed for property inspections been placed into an escrow account? Yes or No?

In regards to BPO Fees:

1-Have any BPOs (Broker Price Opinions) been conducted on my property? Yes or No?

2- If your answer is no, you can skip the rest of the questions in this section concerning BPOs.

3-If yes, please tell me the date of each BPO conducted on my property that is the secured interest for this mortgage, deed of trust or note.

4-Please tell me the price of each BPO.

5-Please tell me who conducted each BPO.

6-Please tell me why BPOs were conducted on my property.

7-Please tell me how BPOs are beneficial to me.

8-Please tell me how BPOs are protective of my property.

9-Please explain your policy on BPOs.

10-Have any BPO fees been assessed to this account? Yes or No?

11-If yes, how much in total BPO fees have been charged to this account?

12-Please identify for me in writing the provision, paragraph, section or sentence of any note, mortgage, deed of trust or any agreement I signed that authorized the assessment, charge or collection of a BPO fee from me.

13-Please send to me copies of all BPO reports that have been done on my property.

14-Has any fee charged or assessed for a BPO been placed into an escrow account? Yes or No?

In regards to Force-Placed Insurance:

1-Have you placed or ordered any force-placed insurance policies on my property?

2-If yes, please tell me the date of each policy ordered or placed on my property that is the secured interest for this mortgage, deed of trust or note.

3-Please tell me the price of each policy.

4-Please tell me the agent for each policy.

5-Please tell me why each policy was placed on my property.

6-Please tell me how the policies are beneficial to me.

7-Please tell me how the policies are protective of my property.

8-Please explain to me your policy on force-placed insurance.

9-Have any force-placed insurance fees been assessed to this account? Yes or No?

10-If yes, how much in total force-placed insurance fees have been assessed to this account?

11-Have any force-placed insurance fees been charged to this account? Yes or No?

12-If yes, how much in total force-placed insurance fees have been charged to this account?

13-Please identify for me in writing the provision, paragraph, section or sentence of any note, mortgage, deed of trust or any agreement I signed that authorized the assessment, charge or collection of force-placed insurance fees from me.

14-Do you have any relationship with the agent or agency that placed any policies on my property? If yes, please describe.

15-Do you have any relationship with the carrier that issued any policies on my property? If yes, please describe.

16-Has the agency or carrier you used to place a forced-placed insurance on my property provided you any service, computer system, discount on policies, commissions, rebates or any form of consideration? If yes, please describe.

17-Do you maintain a blanket insurance policy to protect your properties when customer policies have expired? Yes or No?

18-Please send to me copies of all forced-placed insurance policies that have been ordered on my property from the inception of this account to the present date.

In regards to Servicing:

For each of the following questions listed below, please provide me with a detailed explanation in writing that answers each question. In addition, I need the following answers to questions concerning the servicing of this account from its inception to the present date.

1-Did the originator or previous servicers of this account have any financing agreements or contracts with your company or an affiliate of your company?

2-Did the originator or previous servicers of this account have any financing agreements or contracts with your company or an affiliate of your company?

3-Did the originator or previous servicers of this account receive any compensation, fee, commission, payment, rebate or other financial consideration from your company or affiliate of your company for handling, processing, originating or administering this loan? If yes, please describe and itemize each and every form of compensation, fee, commission, payment, rebate or other financial consideration paid to the originator of this account by your company or any affiliate.

4-Please identify for me where the originals of this entire account file are currently located and how they are being stored, kept and protected.

5-Where is the original monetary instrument or mortgage I signed located? Please describe its physical location and anyone holding this note as a custodian or trustee if applicable.

6-Where is the original deed of trust or mortgage and note I signed located? Please describe its physical location and anyone holding this note as a custodian or trustee if applicable.

7-Since the inception of this account, has there been any assignment of my monetary instrument/asset to any other party? If the answer is yes, identify the names and addresses of each and every individual, party, bank, trust or entity that has received such assignments.

8-Since the inception of this account, has there been any assignment of the deed of trust or mortgage and note to any other party? If the answer is yes, identify the names and addresses of each and every individual, party, bank, trust or entity that has received such assignments.

9- Since the inception of this account, has there been any sale or assignment of the servicing rights to this mortgage account to any other party? If the answer is yes, identify the names and addresses of each and every individual, party, bank, trust or entity that has received such assignments or sale.

10-Since the inception of this account, have any sub-servicers serviced any portion of this mortgage account? If the answer is yes, identify the names and addresses of each and every individual, party, bank, trust or entity that has sub-serviced this mortgage account.

11-Has this mortgage account been made a part of any mortgage pool since the inception of this loan? If yes, please identify for me each and every account mortgage pool that this mortgage has been a part of from the inception of this account to the present date.

12-Has each and every assignment of my asset/monetary instrument been recorded in the county land records where the property associated with this mortgage account is located?

13-Has there been any electronic assignment of this mortgage with MERS (Mortgage Electronic Registration System) or any other computer mortgage registry service or computer program? If yes, identify the name and address of each and every individual, entity, party, bank, trust or organization or servicers that have been assigned to mortgage servicing rights to this account as well as the beneficial interest to the payments of principal and interest on this loan.

14-Have there been any investors (as defined by your industry) who have participated in any mortgage-backed security, collateral mortgage obligation or other mortgage security instrument that this mortgage account has ever been a part of from the inception of this account to the present date? If yes, identify the name and address of each and every individual, entity, organization and/or trust.

15-Please identify for me the parties and their addresses to all sales contracts, servicing agreements, assignments, alonges, transfers, indemnification agreements, recourse agreements and any agreement related to this account from the inception of this account to the present date.

16-Please provide me with copies of all sales contracts, servicing agreements, assignments, alonges, transfers, indemnification agreements, recourse agreements and any agreement related to this account from the inception of this account to the present date.

17-How much was paid for this individual mortgage account by you?

18-If part of a mortgage pool, what was the principal balance used by you to determine payment for this individual mortgage loan?

19-If part of a mortgage pool, what was the percentage paid by you of the principal balance above used to determine purchase of this individual mortgage loan?

20-Who did you issue a check or payment to for this mortgage loan?

21-Please provide me with copies of the front and back of the canceled check.

22-Did any investor approve of the foreclosure of my property? Yes or No?

23-Has HUD assigned or transferred foreclosure rights to you as required by 12 USC 3754?

24-Please identify all persons who approved the foreclosure of my property.

Please provide me with the documents I have requested and a detailed answer to each of my questions within the lawful time frame. Upon receipt of the documents and answers, an exam and audit will be conducted that may lead to a further document request and answers to questions under an additional RESPA Qualified Written Request letter.

Copies of this Qualified Written Request, Validation of Debt, TILA and request for accounting and legal records, Dispute of Debt letter may be sent to FTC, HUD, Thrift Supervision, and all relevant state and federal regulators; and other consumer advocates; and my congressman.

It is my hope that you answer this RESPA request in accordance with law and the questions, documents and validation of debt to the penny and correct abuses or schemes uncovered and documented.

Default Provisions under this QUALIFIED WRITTEN REQUEST

Kondaur Capital Corporation, or any agents, transfers, or assigns omissions of or agreement by silence of this RESPA REQUEST via certified rebuttal of any and all points herein this RESPA REQUEST, agrees and consents to including but not limited by any violations of law and/or immediate terminate/remove any and all right, title and interest (liens) in James McKinney or any property or collateral connected to James McKinney or account #109147 and waives any and all immunities or defenses in claims and or violations agreed to in this RESPA REQUEST including but not limited by any and all:

1- James McKinney's right, by breach of fiduciary responsibility and fraud and misrepresentation revocation and rescinding any and all power of attorney or appointment Kondaur Capital Corporation may have or may have had in connection with account #109147 and any property and/or real estate connected with account #109147.

2- James McKinney's right to have any certificated or uncertificated security re-registered in James McKinney, and only James McKinney's name.

3- James McKinney's right of collection via Kondaur Capital Corporation liability insurance and/or bond.

4-James McKinney's entitlement in filing and executing any instruments, as power of attorney for and by Kondaur Capital Corporation, including but not limited by a new certificated security or any security agreement perfected by filing a UCC Financing Statement with the Secretary of State in the State where Kondaur Capital Corporation is located.

5-James McKinney's right to damages because of Kondaur Capital Corporation wrongful registration, breach of intermediary responsibility with regard to James McKinney's asset by Kondaur Capital Corporation issuing to James McKinney a certified check for the original value of James McKinney's monetary instrument.

6-James McKinney's right to have account #109147 completely set off because Kondaur Capital Corporation wrongful registration, breach of intermediary responsibility with regard to James McKinney's monetary instrument/asset by Kondaur Capital Corporation

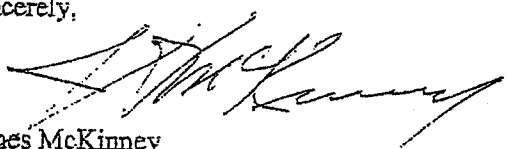
sending confirmation of set off of wrongful liability of James McKinney and issuing a certified check for the difference between the original value of James McKinney's monetary instrument/asset and what James McKinney mistakenly sent to Kondaur Capital Corporation or its predecessor as a payment for such wrongful liability.

Kondaur Capital Corporation or any transfers, agents or assigns offering a rebuttal of this RESPA REQUEST must do so in the manner of this RESPA REQUEST in accordance of and in compliance with current statutes and/or laws by signing in the capacity of a fully liable man or woman being responsible and liable under the penalty of perjury while offering direct testimony with the official capacity as appointed agent for Kondaur Capital Corporation in accordance with Kondaur Capital Corporation Articles of Incorporation, By Laws duly signed by a current and duly sworn under oath director(s) of such corporation/ Holding Corporation/ National Association. Any direct rebuttal with certified true and complete accompanying proof must be posted with the Notary address herein within sixty days. When no verified rebuttal of this RESPA REQUEST is made in a timely manner, a "Certificate of Non-Response" serves as Kondaur Capital Corporation judgment and consent/agreement by means of silence with any and all claims and/or violations herein-stated in the default provisions or any other law.

Power of Attorney: When Kondaur Capital Corporation fails by not rebutting to any part of this RESPA REQUEST Kondaur Capital Corporation agrees with the granting unto James McKinney unlimited Power of Attorney and any and all full authorization in signing and endorsing Kondaur Capital Corporation name upon any instruments in satisfaction of the obligations of this RESPA REQUEST/Agreement or any agreement arising from this agreement. Pre-emption of or to any Bankruptcy proceeding shall not discharge any obligations of this agreement. Consent and agreement with this Power of Attorney by Kondaur Capital Corporation waives any and all claims of James McKinney and/or defenses and remains in effect until the satisfaction of all obligations by Kondaur Capital Corporation have been satisfied.

Please note that this file is disputed as noted above per 12 USC 2605, while this QWR is pending. Thank you.

Sincerely,

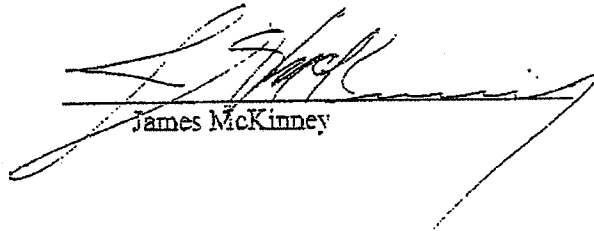

James McKinney

KONDAUR/McKinney-00068

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing QWR has been furnished by U.S. Mail on this 12 day of August 2009 to:

Express US Mail #EQ 568815360 US
Kondaur Capital Corporation
1100 Town & Country, Suite 1600
Orange, CA 92868
Phoenix, AZ 85016



James McKinney

109147-PAYMENT HISTORY
ACCOUNT: 00035562154 NOTE: 40000 SHORT NAME: MCKINNEY JAMES

ORIGINAL BALANCE: 408,458.00 CURRENT BALANCE:
407,272.58
ORIGINAL INTEREST: 0.00 INTEREST ACCRUAL:
12,591,509827
DEFERRED INT BAL: 0.00 DEF INT PAID YTD:
0.00 LAST MAINT DATE: 06/09/09
ORIGINAL BUYDOWN: 0.00 BUYDOWN BALANCE:
0.00 PREV MAINT DATE: 06/02/09
BUYDOWN PD YTD: 0.00 CUR INT REBATE:
0.00 GOOD THRU: 00/01/00
ORIG OTHER CHGS: 0.00 NEXT INT REBATE:
0.00 GOOD THRU: 00/00/00
INTEREST PAID YTD: 2,575.76 INTEREST PAID TO:
01/01/09
NET PROCEEDS: 0.00 UNAPPLIED FUND BAL:
0.00
ESCROW BALANCE: 1,185.32- ESCROW RESERVE BAL:
0.00
LATE CHARGES: 475.26 EXTENSION FEES:
0.00
INT PAID TOT: 45,196.42 MISC CHARGES:
125.00 ACTIVE ACCRUAL: 0.00

RATE RELATION FLOOR CEILING SPLIT RATE TYPE:
RATE PLAN: 0000000
01: 7.000000 - 3.250000 0.000000 12.000000 DOLLAR LIMIT
PRICE PLAN: 000
02: 0.000000 0.000000 999.999999
0.00 APR: 0.000000 BILL ALL INT: N
INTEREST TYPE: S BASIS: S PUT BASIS DATE: 00/00/0000 PUT BASIS: S
EARN RES WTH: L INDEX: 111 1098: Y FREQ: I-I
NEXT RATE CHANGE: 03/01/12, NEXT PAYMENT CHANGE: 04/01/12 VAR PLAN: 550
NEG AM IND: N NEG AM STAT: N NEG AM OVER: Y
RATE EXP: 00/00/00 OPT TYPE: OPT ID: P&I AMORT: 01/19/12
RATE CHANGE DELAY IND: N

	NEXT BILLING DATE	NEXT SCHED DATE/PMT #	LAST BILLING DATE
NEXT PMT DUE DATE			
INTEREST:	07/01/09	07/01/09 1	06/01/09
02/01/09			
TOTAL:	00/00/00	00/00/00 0	00/00/00
00/00/00			

LOAN CATEGORY:	M	LOAN STATUS:	N	MGMT CLASS:
FLDL	CAP INT IND:	N		
COST CENTER:	1602	NOTE TYPE:	273	FED CALL REPORT:
C462	UNPAID CAP INT:	0.00		
BRANCH NO:	405100	OFFICER NO:	41607	SEND NO BILL:
A	INT EARNED YTD:	0.00		
CHARGE DDA/SAV:		CHARGE ACCT:	000000000000	BILL TYPE:
A	ELECTRONIC FEED:	N		
TIMES RENEWED:	1	CENSUS TRACT:		AMORT EDIT:
N	PAPER FEED:			
PRINCIPAL TYPE:	R	COMMITMENT NO:	0	PAID OUT IND:
0				
NAME/ADDRESS IND:	1	BILL NAME ADDR:	1	PAYMENT METHOD:
P	PRIORITY NUMBER:	000		
PROP/NAME ADDR:	0	PROP ZIP CODE:	85219	USER CODES:
2				
APPRaisal DATE:	01/19/07	APPRaisal:	550,000	ESC ACCT NO:
000000000000	ESC INT PLAN:	000		

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EXHIBIT 2
KONDAUR/McKinney-00070

109147-PAYMENT HISTORY

ORIG LTV: 80.00 CUR LTV: 79.77 AUTOPAY IND:

RC USAGE: N CLTY: 0.00

POINTS: 15 - 30 - 60 - 90 RISK RATING: 603 15 - 30 -

EOPY INT: 28,397.39 UCC DATE: 00 00:00 TIMES LATE: 005 004

003 002 ROLL TM LT

EOPY PTS: 0.00 CTD ACCRUAL: 0.00000000 AVG DLY BAL:

SBA: N AUTO NON RE-ACCR: Y N PMT-TERM CHG TYP:

RND IND: N MIN PMT IND: N

FLC: N CRA REPORTABLE: ACCRUAL METHOD:

A COLLECTION/REFERRAL: Y

COUPON START DATE 00/00/00 COUPON START NO: 0 COUPON NUMBER PMTS:

DROP IND: 0 DROP REASON: 0

LEAD TIME IND: N LEAD TIME DAYS: 000 NOTE BILL ONLY:

N APPL SCORE: 0754

OCCUPANT: Y PAYMENT REAMORT IND:

00/00/00 FINAL SCORE: 0000 ASSUMED DATE:

REGULATION Z: N FORECLOSURE: 05/29/09 ASSUMED:

0 MKT VALUE: 0

OVER LL IND: N WAREHOUSE IND:

% GVT INS: 0.000000

EXPECTED MATURITY: 03/01/37 ABA ROUTING: 0 ABA ACCT:

BALLOON LOAN IND: 1

SECT OF ACT: 80. GUARANTEE ESCR: 00 SUBNOTE NUMBER:

0 DELIVERY DATE: 00/00/00

CO-MAKE1 NAME/ADDR: EMPLOYER NAME/ADDR:

A SEC NAICS CD: 000000 DCS ACTIVE IND:

CO-MAKE2 NAME/ADDR: ATTORNEY NAME/ADDR:

00/00/00 RESTRUCT IND: DCS PURGE DATE:

CO-MAKE3 NAME/ADDR: ACH ACCT TYPE:

00 CREDIT BAL IND: N ACH AUTOPAY DAY:

CLIENT REF NO: SELF GEN FGN CURR CODE: LTR CREDIT N/S:

B4 ELIG/INELIG:

CASE NO: 000000000000 HOLD UNAPPLIED: 000000000000 HOLD BUNDOWN:

000000000000 TRACK CODE: BANK

HOLD ESC/FEE: 000000000000 AMORT EFF RATE: 0.000000 FEE AMORT TO DATE:

00/00/00 UCCC IND: Y

FHA INDICATOR: 0 CONTRACT TYPE: 1* FHLB TYPE/CLASS:

00 / 00 RATIFY DATE: 00/00/00

HOLD RELEASE DAYS: 00 DP COLL PERCENT: 000 DP COLL ACCT:

000000000000 MCOLL: N

098 M&T MARSHALL AND ILSLEY BANK LOAN ACCOUNTING NOTE INQUIRY

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INVESTOR: 0 PROPERTY TYPE: 42 FHLB UNITS:

00000 DUAL ACCOUNTING: N

SPLIT RISK 1 SPLIT RISK PERC 1 0.00 SPLIT RISK BAL 1

0.00 SPLT RSK LMT 0.00

SPLIT RISK 2 SPLIT RISK PERC 2 0.00 SPLIT RISK BAL 2

0.00 RC INT ONLY IND: N

REPORT TO HMDA: Y BUILDING CODE: FHLB STATE:

CR BAL CHK OVRD: Y

FUNDS INDEX: 000 REFINANCED: FHLB INDEX:

000 OVERHEAD TYPE: 00

FUNDS RATE: 0.0000 MORTGAGE IND: 1 FHLB RATE CAP:

00 ACCURDRAW IND: N

DISPOSITION: 0 PART SYND IND: 0 AUTO PART

DISTRIBUTION: N PMI 1098 IND: N

FORMULA 1: 0.00 A/R COLLAT: 0.00 REL BANK NO:

0 ORIG LLS: 0.00

Page 1

109147-Payment History

FORMULA 2: 0.00 SBA GRP NUM: SBA STATUS: SBA BASIS
 POINT: 0.000 HPA ID: 6807-1098 IND: N/Y
 INCOME: 0.00 HMDA STATE/CNTY: 04021 GUAR COMP NO:
 000000000000 PMI CANCEL DATE: 00/00/00
 PER EARN: 56,589.4174717 TOT EARN: 56,589.4174717 AVERAGE BAL:
 407,272.56 PMI TERM DATE: 00/00/00
 PURCHASE DATE: 00/00/00 PURCHASE LOAN ID:
 0.00 PMI MIDPOINT DATE: 00/00/00 PURCHASE AMT:

TRANS COMP NO: 000000000000 TRANSFER II:
 TRANSFER IND:
 CURR PRIN BNP: 0.00 CURR INT BNP: 0.00
 UNAMORT ORG AMT: 0.00
 TOTAL PRIN BNP: 0.00 TOTAL INT BNP: 0.00 CUR
 AMORT UNERND: 0.00
 ST INT DATE: 02/07/07 TERM: 360 MAT. EXT MONTHS: 0
 AMORT PR MTH BAL: 0.00
 ISSUE DATE: 02/07/07 MATURITY DATE: 03/01/37
 AMORT EARNED MTD: 0.00
 RENEWAL DATE: 03/19/08 LAST TRAN DATE: 04/03/09
 AMORT EARNED YTD: 0.00
 ACC/REB HOLD: N 00/00/00 LAST TRAN CODE: 714
 AMORT EARNED LTD: 0.00
 FL PMT DT-ADV: 03/01/37 LAST TRAN AMT: 2,375.76
 POST-MATURITY BILL IND: N
 COLL CODE/IND: RD/ 0 COLL PERCENT: 100
 POST-MATURITY BILL FREQ: 0
 DESC: 618 SOUTH WICKIUP ROAD APACHE JUNCTION AZ 85219-2577 POST
 MATURITY ADVANCE IND: N
 RIGHT TO CURE NUMBER: 0 RIGHT TO CURE STATE:
 INV/COMM NUM: 000000
 RIGHT TO CURE DATE SENT: 00/00/00 INV
 ACTION CODE: 000 INV
 CURTAILMENT IND: 0
 ACTION DATE: 00/00/00
 UNAPPLIED REASON:
 DEFICIT COMMIT NO: 000
 REASON RELEASE DATE: 00/00/0000 BUYDOWN CODE:
 BUYDOWN CODE RELEASE DATE: 00/00/0000 UNA
 CREDIT BUREAU IND: Y LATE
 CREDIT BUREAU RELEASE DATE: 00/00/0000 LATE
 CB ACCOUNT TYPE: 26 LATE
 HUD ACTION DATE: 00/0000 NOTE
 REMOVAL CODE: 000
 PEND BALANCE: 0.00 PEND VAR PLAN NO: 000 PEND
 INDEX RATE: 0.000000 PEND MARGIN: 0.000000 PEND
 PEND TERM: 000
 RATE CAP: 0.000000 PEND MAINT DATE: 00/00/0000 CONV
 PEND PAY CAP: 0.000000
 OPT DATE: 00/00/0000 CONV OPT FEE: 0.00 CONV
 CONV DTE IND: N
 FEE IND:
 CONV EFF DATE: 00/00/0000 INT REIMBURSEMENT 0.00 1099
 REIME INT: 0.00
 FOREGONE INTEREST: 0.00 EOPM REBATE: 0.00 ORIG
 INTEREST RATE: 7.000000 CREDIT BUREAU GRACE DAYS: 0 NOTE
 ID#
 CLS OVERRIDE: N
 CREDIT BUREAU STATUS: SZ DATE OF OCCURRENCE: 02/27/2009
 SPECIAL COMMENTS: SC

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KONDAUR/McKinney-00072

109147-PAYMENT HISTORY
0000 MAKE:

YEAR:
MODEL:
VIN/SERIAL CD: VIN SERIAL NBR: APPL
NBR:
LIEN FILING DTE: 00/00/00 LIEN RELEASE DATE: 00/00/00 PROP
TAX ID:103-04-05706 (COVERS MORE
RECORD BOOK: RECORD PAGE:
INSTRUMENT NBR:
USER SCORE1: USER SCORE2:

USER DEFINITION SEGMENT DATE AMOUNT DESCRIPTION
10. 01/30/07 0.00
ESAN RECORD ESAN OPT: Y RESET DATE: 06 01 09 STATUS: A PLAN NO: 905 NRT PYMT
EFF DATE: 07/01/10 ESCR SURP IND: Y
LAST SUCC ADJ DATE: 00/00/00 ESCR COMP YR: 07/09 SURP
REFUND DT: 00/00/00 AUTO REF STOP DAYS: 0
SURP SHORT BAL: .00 DECY BAL: .00

PAYMT SCHEDULE S#	EFF DATE	TYP	PAY	FREQ	TOTAL	PAYMENT AMT	P&I AMOUNT
ESCROW AMOUNT	BUYDOWN AMOUNT			NEXT PMT#			
	PAYMT PERCENT	PAYMT	MINIMUM	BUS		PAYMT PLAN	
01	05/01/08	0	14	1	0.00		0.00
0.00		0.00		0	000	00	

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PAYMT SCHEDULE S#	EFF DATE	TYP	PAY	FREQ	TOTAL	PAYMENT AMT	P&I AMOUNT
ESCROW AMOUNT	BUYDOWN AMOUNT			NEXT PMT#			
	PAYMT PERCENT	PAYMT	MINIMUM	BUS		PAYMT PLAN	
02	07/01/09	0	333	1	217.40		0.00
217.40		0.00		0	000	00	

NOT PAID AMOUNT	CONSTANT	BILLED AMOUNT
BILLING DUE DATE PAID DATE LC IND TOTAL		
2,375.76 02/01/09 00/00/00 2,375.76		
	PRINCIPAL/PAYMENT	

NOT PAID AMOUNT	CONSTANT	BILLED AMOUNT
BILLING DUE DATE PAID DATE LC IND TOTAL		
2,375.75 03/01/09 00/00/00 2,375.75		
	PRINCIPAL/PAYMENT	

NOT PAID AMOUNT	CONSTANT	BILLED AMOUNT
BILLING DUE DATE PAID DATE LC IND TOTAL		
2,375.76 04/01/09 00/00/00 2,375.76		
	PRINCIPAL/PAYMENT	

NOT PAID AMOUNT	CONSTANT	BILLED AMOUNT
BILLING DUE DATE PAID DATE LC IND TOTAL		
2,375.76 05/01/09 00/00/00 2,375.76		
	PRINCIPAL/PAYMENT	

109147-Payment History

NOT PAID AMOUNT	CONSTANT		BILLED AMOUNT
BILLING	DUE DATE	PAID DATE LC IND	TOTAL
2,375.75	06/01/09	2,375.75 00/00/00	2,375.75
		PRINCIPAL/PAYMENT	

ESCR# ACT/INACT: TYPE: T COLLECTION: 2
 DISBURSEMENT DATE AMOUNT
 02 PAYEE: 00020110000 CATEGORY: TAX SUB CAT: 01
 NEXT EXPECTED: 00/00/00 COV: 0.00 RATE: 0.000000
 EXP DATE: 00/00/00 PREM CALC: CASE NO: 00
 LAST ACTUAL: 00/00/00 DISB EXCEPT: N INT IND: N
 CURRENT PERIOD: PREVIOUS PERIOD: 0.00 PREM:
 FREQUENCY: 1 DISB EXCEPT: 0.00
 CUST/PAYEE: 0.00 CUR FHA ANV: 0000 EVEN AMT: Y NC INST: 00
 PEND FHA ANV: 0000 PEND PREM AMT: 0.00
 CK GP NO: 000 CNTR NO: 0012813775 HIT: 0.00
 YTD DISB AMT: 0.00 R7360 IND: N
 STATUS IND: N SUFFIX: 0000 TRN: INST 1 AMT/DTE: 0.00 00/00 INST 2 AMT/DTE:
 0.00 00/00 INST 3 AMT/DTE: 0.00 00/00 INST 4 AMT/DTE:
 0.00 00/00
 ID 01 1030405744

ESCR# ACT/INACT: TYPE: I COLLECTION: 1
 DISBURSEMENT DATE AMOUNT
 40 PAYEE: 00000460745 CATEGORY: HAZ SUB CAT: 01
 NEXT EXPECTED: 01/31/10 COV: 1,425.45 RATE: 0.000000
 EXP DATE: 01/31/10 PREM CALC: CASE NO: 00
 LAST ACTUAL: 01/31/09 DISB EXCEPT: X INT IND: N
 CURRENT PERIOD: PREVIOUS PERIOD: 0.00 PREM:
 FREQUENCY: 4 DISB EXCEPT: 0.00
 CUST/PAYEE: 0.00 CUR FHA ANV: 0000 EVEN AMT: Y NC INST: 00
 PEND FHA ANV: 0000 PEND PREM AMT: 0.00
 CK GP NO: 000 CNTR NO: 0000000000 HIT: 1,183.32
 YTD DISB AMT: 1,183.32 R7360 IND: N
 STATUS IND: N SUFFIX: 0000 TRN: INST 1 AMT/DTE: 0.00 00/00 INST 2 AMT/DTE:
 0.00 00/00 INST 3 AMT/DTE: 0.00 00/00 INST 4 AMT/DTE:
 0.00 00/00
 ID 01 FORCE PLACED HAZ INS

TOTAL BILLED NOT PAID

11,878.78

NOTE#	EFF DATE	TR#	ACT DATE	TCD REV	PRINCIPAL AMT	TOTAL AMT
PRIN BAL AFTER			COLLAT AMT		SN/I#	
PAYEE					INTEREST AMT	
			COLL/ITEM BAL			

40000	02/07/07	001	02/14/07	310	C	0.00	0.00
	0.00					0.00	0.00
						0.00	

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109147-PAYMENT HISTORY
 M&T MARSHALL AND ISLEY BANK
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LOAN ACCOUNTING

NOTE INQUIRY

NOTE#	EFF DATE	TRF	ACT DATE	TCD	REV	PRINCIPAL AMT	TOTAL AMT
PRIN BAL AFTER	PAYEE		COLLAT AMT			INT#	
			COLL ITEM BAL			INTEREST AMT	
40000	02/07/07	002	02 16 07	750	0	78,490.00	78,490.00
78,490.00					0.00	0.00	
					0.00		
40000	04/01/07	001	04 02 07	750	0	797.80	797.80
79,287.80					0.00	0.00	
					0.00		
40000	04/01/07	002	04 02 07	610	0	0.00	797.80
79,287.80					0.00	797.80	
					0.00		
40000	04 03 07	001	04 03 07	750	0	36,445.20	36,445.20
115,733.00					0.00	0.00	
					0.00		
40000	04 26 07	001	04 26 07	750	0	53,452.96	53,452.96
169,185.96					0.00	0.00	
					0.00		
40000	05 01 07	001	05 01 07	750	0	651.88	651.88
169,837.84					0.00	0.00	
					0.00		
40000	05 01 07	002	05 02 07	610	0	0.00	651.88
169,837.84					0.00	651.88	
					0.00		
40000	05 10 07	001	05 10 07	750	0	49,032.06	49,032.06
218,869.90					0.00	0.00	
					0.00		
40000	06 01 07	001	06 01 07	750	0	1,267.85	1,267.85
220,137.76					0.00	0.00	
					0.00		
40000	06 01 07	002	06 01 07	610	0	0.00	1,267.85
220,137.76					0.00	1,267.85	
					0.00		
40000	06 15 07	001	06 15 07	750	0	18,750.00	18,750.00
238,887.76					0.00	0.00	
					0.00		

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KONDAUR/McKinney-00075

109147-Payment History

40000	07/01/07	001	07/02/07	750	0	1,324.08	1,324.08
	240,211.84				0.00	0	
					0.00	0.00	
40000	07/01/07	002	07/02/07	610	0	0.00	1,324.08
	240,211.84				0.00	0	
					0.00	1,324.08	
40000	07/17/07	001	07/17/07	750	0	16,975.46	16,975.46
	267,187.30				0.00	0	
					0.00	0.00	
40000	08/01/07	001	08/01/07	750	0	1,505.71	1,505.71
	268,693.01				0.00	0	
					0.00	0.00	
40000	08/01/07	002	08/01/07	610	0	0.00	1,505.71
	268,693.01				0.00	0	
					0.00	1,505.71	
40000	08/02/07	001	08/02/07	750	0	58,511.32	58,511.32
	327,005.33				0.00	0	
					0.00	0.00	

098 W&I MARSHALL AND LISLEY BANK LOAN ACCOUNTING NOTE INQUIRY
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NOTE#	EFF DATE	TR#	ACT DATE	TOC REV	PRINCIPAL AMT	TOTAL AMT
PRIN BAL AFTER			COLLAT AMT	SN/I#	INTEREST AMT	
PAYEE			COLL/ITEM BAL			
40000	08/06/07	001	08/06/07	750	0	22,000.00
	349,005.33				0.00	0
					0.00	0.00
40000	09/01/07	001	09/05/07	750	0	2,042.63
	351,047.96				0.00	0
					0.00	0.00
40000	09/01/07	002	09/05/07	610	0	0.00
	351,047.96				0.00	0
					0.00	2,042.63
40000	09/05/07	001	09/05/07	750	0	40,000.00
	391,047.96				0.00	0
					0.00	0.00
40000	10/01/07	001	10/01/07	750	0	2,219.18
	393,267.14				0.00	0
					0.00	0.00

105147-PAYMENT -PSTORY									
40000	10/01/07	002	10/01/07	610	0	0.00		2,219.18	
	393,167.24				0.00	0			
					0.00		2,219.18		
40000	11/01/07	001	11/01/07	750	0	2,338.05		2,338.05	
	393,603.19				0.00	0			
					0.00		0.00		
40000	11/01/07	002	11/01/07	610	0	0.00		2,338.05	
	393,603.19				0.00	0			
					0.00		2,338.05		
40000	12/01/07	001	12/01/07	750	0	2,276.08		2,276.08	
	397,881.27				0.00	0			
					0.00		0.00		
40000	12/01/07	002	12/01/07	610	0	0.00		2,276.08	
	397,881.27				0.00	0			
					0.00		2,276.08		
40000	01/01/08	001	01/01/08	750	0	2,365.49		2,365.49	
	400,246.76				0.00	0			
					0.00		0.00		
40000	01/01/08	002	01/01/08	610	0	0.00		2,365.49	
	400,246.76				0.00	0			
					0.00		2,365.49		
40000	02/01/08	001	02/01/08	750	0	2,379.55		2,379.55	
	401,626.31				0.00	0			
					0.00		0.00		
40000	02/01/08	002	02/01/08	610	0	0.00		2,379.55	
	402,626.31				0.00	0			
					0.00		2,379.55		
40000	03/01/08	001	03/01/08	750	0	2,239.26		2,239.26	
	404,865.57				0.00	0			
					0.00		0.00		
40000	03/01/08	002	03/01/08	610	0	0.00		2,239.26	
	404,865.57				0.00	0			
					0.00		2,239.26		
40000	03/19/08	001	04/04/08	661	0	0.00		0.00	
	404,865.57				0.00	0			
					0.00		0.00		

098 M&T MARSHALL AND TISLEY BANK LOAN ACCOUNTING NOTE INQUIRY
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109147-Payment History									
NOTE#	EFF DATE	TR#	ACT DATE	TCI REV	PRINCIPAL AMT	TOTAL AMT			
PREN BAL	AFTER		COLLAT AMT	SN/I#	INTEREST AMT				
							COLL/ITEM BAL		
40000	04/01/08	001	04/02/08	750	0	1,407.01	1,407.01		
	407,272.58				0.00	0.00			
					0.00				
40000	04/01/08	002	04/02/08	610	0	0.00	1,407.01		
	407,272.58				0.00	0			
					0.00	1,407.01			
40000	04/01/08	003	04/04/08	400	C	NEW RATE=	7.000	NEW BASIS= 3	
40000	05/01/08	001	04/30/08	610	0	0.00	2,361.72		
	407,272.58				0.00	0			
					0.00	0.00			
					0.00				
						2,361.72			
40000	05/01/08	002	05/22/08	610	0	0.00	2,375.76		
	407,272.58				0.00	0			
					0.00	2,375.76			
					0.00				
						2,361.72-			
40000	05/30/08	001	05/30/08	668	0	0.02	0.02		
	407,272.58				0.00	0			
					0.00	0.00			
					0.00				
40000	06/01/08	001	05/30/08	610	0	0.00	2,375.76		
	407,272.58				0.00	0			
					0.00	2,375.76			
					0.00				
40000	07/01/08	001	07/01/08	610	0	0.00	2,375.76		
	407,272.58				0.00	0			
					0.00	2,375.76			
					0.00				
40000	08/01/08	001	07/30/08	610	0	0.00	2,375.76		
	407,272.58				0.00	0			
					0.00	2,375.76			
					0.00				
40000	09/01/08	001	09/03/08	610	0	0.00	2,375.76		
	407,272.58				0.00	0			
					0.00	2,375.76			
					0.00				
40000	10/01/08	001	10/02/08	610	0	0.00	2,375.76		
	407,272.58				0.00	0			
					0.00	2,375.76			
					0.00				
40000	11/01/08	001	11/07/08	610	0	0.00	2,375.76		
	407,272.58				0.00	0			
					0.00	2,375.76			
					0.00				

109147-Payment History

40000	12/01/08	001	12/12/08	610	0	0.00	2,375.76
	407,272.56				0.00	0	
						2,375.76	
					0.00		
40000	01/01/09	001	01/09/09	610	0	0.00	2,375.76
	407,272.56				0.00	0	
						2,375.76	
					0.00		
40000	04/09/09	001	05/12/09	714	0	0.00	2,189.32
	407,272.56				0.00	0	
						0.00	
					0.00		

ESCROW AMT

2,189.32

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M&I MARSHALL AND ELSLEY BANK
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LOAN ACCOUNTING

NOTE INQUIRY

NOTE FEE PLAN:	EE BILL FREQ:	MIN FEE:
ENTERED DATE:	03/06/08	
NUMBER:	1 BILL LEAD TIME:	0 MAX FEE:
ASSESS START:	03/06/08	
DELETE:	DETAIL BILL IND:	CURR ASSESS:
\$0.00	ASSESS END:	99/99/99
STOP IND:	0 POOLED BILL IND:	YTD ASSESS:
\$0.00	1ST PMT DUE:	00/00/00
NEW TODAY:	N COMB BILL IND:	ORIG ASSESS:
\$250.00	PRIOR PMT DUE:	00/00/00
NEW THIS PERIOD:	Y NAME ADDRESS IND:	2 WAIVED YTD:
\$0.00	CURR PMT DUE:	00/00/00
CHG DEPOSIT IND:	FEE TYPE:	N CURR DUE:
\$0.00	NEXT PMT DUE:	00/00/00
CHG ACCT:	0 FEE CATEGORY:	MS TOTAL DUE:
\$0.00	START EARN:	00/00/00
EARN IND:	0 REBATE IND:	N PAID YTD:
\$0.00	GOOD DATE 1:	00/00/00
FINANCE IND:	EARNINGS TERM:	0 EARN YTD:
\$0.00	GOOD DATE 2:	00/00/00
NFEE BASIS:	7 CAP FEE IND:	N EARN MTD:
\$0.00		
	DISPLAY TO CUST:	Y EARN LTD:
\$0.00		
	NOTE CALC IND:	N PRIOR MNTH UNEARN:
\$0.00		
		CURR MNTH UNEARN:
\$0.00		
		NEXT MNTH UNEARN:
\$0.00		
		UNPAID CAP FEES:
\$0.00		

	COMPONENT 1	COMPONENT 2	COMPONENT 3
RLTD INDEX:	000	000	000
RATE:	250.00	0.00000000	0.00000000
RLTD-KEY:	00000040000	10000000000	00000000000
RLTD-SEG:			

NOTE FEE PLAN:	FR BILL FREQ:	MIN FEE:
ENTERED DATE:	02/20/07	
NUMBER:	1 BILL LEAD TIME:	0 MAX FEE:

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109147-PAYMENT - HISTORY

DELETE:	ASSESS START:	02/20/07	DETAIL BILL IND:		CURR ASSESS:
\$0.00	ASSESS END:	99/99/99			
STOP IND:			0 POOLED BILL IND:		YTD ASSESS:
\$0.00	1ST PMT DUE:	00/00/00			
NEW TODAY:			N COMB BILL IND:	N	ORIG ASSESS:
\$585.00	PRIOR PMT DUE:	00/00/00			
NEW THIS PERIOD:			Y NAME ADDRESS IND:	1	WAIVED YTD:
\$0.00	CURR PMT DUE:	00/00/00			
CHG DEPOSIT IND:			FEE TYPE:	N	CURR DUE:
\$0.00	NEXT PMT DUE:	00/00/00			
CHG ACCT:			0 FEE CATEGORY:	MS	TOTAL DUE:
\$0.00	START EARN:	02/07/07			
EARN IND:			4 REBATE IND:	N	PAID YTD:
\$0.00	GOOD DATE 1:	07/07/09			
FINANCE IND:			EARNINGS TERM:	360	EARN YTD:
\$4.88	GOOD DATE 2:	08/07/09			
NFEE BASIS:			7 CAP FEE IND:	N	EARN MTD:
\$0.00					
			DISPLAY TO CUST:	Y	EARN LTD:
\$0.00					
\$542.75			NOTE CALC IND:		PRIOR MNTH UNEARN:
\$541.13					CURR MNTH UNEARN:
\$539.50					NEXT MNTH UNEARN:
\$0.00					UNPAID CAP FEES:

	COMPONENT 1	COMPONENT 2	COMPONENT 3
RLTD INDEX:	000	000	000
RATE:	585.00	0.00000000	0.00000000
RLTD-KEY:	00000040000	00000000000	00000000000
RLTD-SEG:			

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NOTE FEE PLAN:	MS BILL FREQ:	MIN FEE:
ENTERED DATE:	03/17/09	
NUMBER:	1 BILL LEAD TIME:	0 MAX FEE:
ASSESS START:	03/17/09	
DELETE:	DETAIL BILL IND:	CURR ASSESS:
\$0.00		
STOP IND:	0 POOLED BILL IND:	YTD ASSESS:
\$125.00		
1ST PMT DUE:	00/00/00	
NEW TODAY:	N COMB BILL IND:	N ORIG ASSESS:
\$125.00		
PRIOR PMT DUE:	00/00/00	
NEW THIS PERIOD:	Y NAME ADDRESS IND:	1 WAIVED YTD:
\$0.00		
CURR PMT DUE:	00/00/00	
CHG DEPOSIT IND:	FEE TYPE:	N CURR DUE:
\$125.00		
NEXT PMT DUE:	00/00/00	
CHG ACCT:	0 FEE CATEGORY:	MS TOTAL DUE:
\$125.00		
START EARN:	00/00/00	
EARN IND:	0 REBATE IND:	N PAID YTD:
\$0.00		
GOOD DATE 1:	00/00/00	
FINANCE IND:	EARNINGS TERM:	0 EARN YTD:
\$125.00		
GOOD DATE 2:	00/00/00	
NFEE BASIS:	7 CAP FEE IND:	N EARN MTD:
\$0.00		
	DISPLAY TO CUST:	Y EARN LTD:
\$0.00		

109147-PAYMENT HISTORY
NOTE CALC IND: N

\$0.00
\$0.00
\$0.00
\$0.00

PRIOR MNTH UNEARN:
CURR MNTH UNEARN:
NEXT MNTH UNEARN:
UNPAID CAP FEES:

	COMPONENT 1	COMPONENT 2	COMPONENT 3
RLTD INDEX:	000	000	000
RATE:	125.00	0.00000000	0.00000000
RLTD-KEY:	00000040000	00000000000	00000000000
RLTD-SEG:			

NOTE FEE PLAN: M8 BILL FREQ: MIN FEE:
ENTERED DATE: 03/18/09
NUMBER: 2 BILL LEAD TIME: 0 MAX FEE:
ASSESS START: 03/18/09
DELETE: DETAIL BILL IND: CURR ASSESS:
\$0.00 ASSESS END: 99/99/99
STOP IND: 0 POOLED BILL IND: YTD ASSESS:
\$125.00 1ST PMT DUE: 00 00/00
NEW TODAY: N COMB BILL IND: N ORIG ASSESS:
\$125.00 PRIOR PMT DUE: 00 00/00
NEW THIS PERIOD: Y NAME ADDRESS IND: 1 WAIVED YTD:
\$125.00 CURR PMT DUE: 00 00/00
CHG DEPOSIT IND: FEE TYPE: N CURR DUE:
\$0.00 NEXT PMT DUE: 00 00/00
CHG ACCT: 0 FEE CATEGORY: MS TOTAL DUE:
\$0.00 START EARN: 00 00/00
EARN IND: 0 REBATE IND: N PAID YTD:
\$0.00 GOOD DATE 1: 00 00/00
FINANCE IND: EARNINGS TERM: 0 EARN YTD:
\$0.00 GOOD DATE 2: 00 00/00
NFEE BASIS: 7 CAP FEE IND: N EARN MTD:
\$0.00
\$0.00 DISPLAY TO CUST: Y EARN LTD:
\$0.00 NOTE CALC IND: N PRIOR MNTH UNEARN:
\$0.00 CURR MNTH UNEARN:
\$0.00 NEXT MNTH UNEARN:
\$0.00 UNPAID CAP FEES:

	COMPONENT 1	COMPONENT 2	COMPONENT 3
RLTD INDEX:	000	000	000
RATE:	125.00	0.00000000	0.00000000
RLTD-KEY:	00000040000	00000000000	00000000000
RLTD-SEG:			

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NOTE FEE PLAN: 11 BILL FREQ: MIN FEE:
ENTERED DATE: 04 04/08
NUMBER: 1 BILL LEAD TIME: 0 MAX FEE:
ASSESS START: 04 04/08
DELETE: DETAIL BILL IND: CURR ASSESS:
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109147-Payment History

\$0.00	ASSESS END:	99/99/99		
STOP IND:		0	POOLED BILL IND:	YTD ASSESS:
\$475.16	1ST PMT DUE:	00/00/00		
NEW TODAY:		N	COMB BILL IND:	ORIG ASSESS:
\$593.95	PRIOR PMT DUE:	00/00/00		
NEW THIS PERIOD:		Y	NAME ADDRESS IND:	1
\$0.00	CURR PMT DUE:	00/00/00		WAITED YTD:
CHG DEPOSIT IND:			FEE TYPE:	N
\$118.79	NEXT PMT DUE:	00/00/00		CURR DUE:
CHG ACCT:		0	FEE CATEGORY:	LT
\$475.16	START EARN:	00/00/00		TOTAL DUE:
EARN IND:		0	REBATE IND:	N
\$0.00	GOOD DATE 1:	00/00/00		PAID YTD:
FINANCE IND:			EARNINGS TERM:	0
\$475.16	GOOD DATE 2:	00/00/00		EARN YTD:
NFEE BASIS:			CAP FEE IND:	N
\$0.00				EARN MTD:
			DISPLAY TO CUST:	Y
\$0.00				EARN LTD:
\$0.00			NOTE CALC IND:	N
				PRIOR MNTH UNEARN:
\$0.00				CURR MNTH UNEARN:
\$0.00				NEXT MNTH UNEARN:
\$0.00				UNPAID CAP FEES:
\$0.00				

	COMPONENT 1	COMPONENT 2	COMPONENT 3
RLTD INDEX:			
RATE:	5.00000000	0.00000000	0.00000000
RLTD-KEY:	00000040000	00000000000	00000000000
RLTD-SEG:			

NOTE FEE PLAN:	75	BILL FREQ:		MIN FEE:
\$0.00	ENTERED DATE:	02/14/07		
	NUMBER:	1	BILL LEAD TIME:	0
\$999999,999,999.99	ASSESS START:	02/14/07		MAX FEE:
DELETE:			DETAIL BILL IND:	
\$515.00	ASSESS END:	99/99/99		CURR ASSESS:
STOP IND:		0	POOLED BILL IND:	YTD ASSESS:
\$0.00	1ST PMT DUE:	04/01/07		ORIG ASSESS:
NEW TODAY:		N	COMB BILL IND:	
\$515.00	PRIOR PMT DUE:	00/00/00		WAITED YTD:
NEW THIS PERIOD:		Y	NAME ADDRESS IND:	1
\$0.00	CURR PMT DUE:	00/00/00		CURR DUE:
CHG DEPOSIT IND:			FEE TYPE:	N
\$0.00	NEXT PMT DUE:	00/00/00		TOTAL DUE:
CHG ACCT:		0	FEE CATEGORY:	CS
\$0.00	START EARN:	02/07/07		PAID YTD:
EARN IND:		4	REBATE IND:	N
\$0.00	GOOD DATE 1:	07/07/09		EARN YTD:
FINANCE IND:			EARNINGS TERM:	361
\$4.28	GOOD DATE 2:	08/07/09		EARN MTD:
NFEE BASIS:		0	CAP FEE IND:	N
\$0.00				EARN LTD:
\$0.00			DISPLAY TO CUST:	N
\$477.91			NOTE CALC IND:	N
\$476.48				PRIOR MNTH UNEARN:
				CURR MNTH UNEARN:

109147-PAYMENT HISTORY

\$475.06

NEXT MONTH UNEARN:

\$0.00

UNPAID CAP FEES:

	COMPONENT 1	COMPONENT 2	COMPONENT 3
R.LTD INDEX:	000	000	000
RATE:	515.00	0.00000000	0.00000000
R.LTD-KEY:	00000040000	00000000000	00000000000
R.LTD-SEG:			

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LOAN ACCOUNTING

NOTE INQUIRY

Payment History Updated									
ONOTE#	EFF DATE	TR#	ACT DATE	TCD REV	PRINCIPAL AMT	TOTAL AMT	INTEREST AMT	SN/IF	
PRIN BAL AFTER	PAYEE		COLLAT AMT						
			COLL ITEM BAL						
040000	02/07/07	001	02/14/07	330	0.00	0.00	0.00		
	3.00			0.00	0	0.00			
040000	02/07/07	002	02/26/07	750	0.00	78,490.00	78,490.00		
	78,490.00			0.00	0	0.00			
040000	04/01/07	001	04/02/07	750	0.00	797.80	797.80		
	79,287.80			0.00	10	0.00			
040000	04/01/07	002	04/02/07	610	0.00	0.00	797.80		
	79,287.80			0.00	0	797.80			
040000	04/03/07	001	04/03/07	750	0.00	36,445.20	36,445.20		
	115,733.00			0.00	0	0.00			
040000	04/25/07	001	04/25/07	750	0.00	53,452.96	53,452.96		
	169,185.96			0.00	0	0.00			
040000	05/01/07	001	05/02/07	750	0.00	651.88	651.88		
	169,837.84			0.00	0	0.00			
040000	05/01/07	002	05/02/07	610	0.00	0.00	651.88		
	169,837.84			0.00	0	651.88			
040000	05/10/07	001	05/10/07	750	0.00	49,032.06	49,032.06		
	218,869.90			0.00	0	0.00			
040000	06/01/07	001	06/01/07	750	0.00	1,267.86	1,267.86		
	220,137.76			0.00	0	0.00			
040000	06/01/07	002	06/01/07	610	0.00	0.00	1,267.86		
	220,137.76			0.00	0	1,267.86			
040000	06/15/07	001	06/15/07	750	0.00	18,750.00	18,750.00		
	238,887.76			0.00	0	0.00			
040000	07/01/07	001	07/02/07	750	0.00	1,324.08	1,324.08		
	240,211.84			0.00	0	0.00			
040000	07/01/07	002	07/02/07	610	0.00	0.00	1,324.08		
	240,211.84			0.00	0	1,324.08			
040000	07/17/07	001	07/17/07	750	0.00	26,975.46	26,975.46		
	267,187.30			0.00	0	0.00			

Payment History Updated

040000	08/01/07	001	08/01/07	750	0	1,505.71	1,505.71
	268,693.01				0.00	0	
					0.00		0.00
040000	08/01/07	002	08/01/07	610	0	0.00	1,505.71
	268,693.01				0.00	0	
					0.00		1,505.71
1098					0.00		
	M&T MARSHALL AND ISLEY BANK					LOAN ACCOUNTING	NOTE INQUIRY
	R-5310-001-001	08-14-08			PAGE	5249	
040000	08/02/07	001	08/02/07	750	0	58,312.32	58,312.32
	327,005.33				0.00	0	
					0.00		0.00
040000	08/06/07	001	08/06/07	750	0	22,000.00	22,000.00
	349,005.33				0.00	0	
					0.00		0.00
040000	09/01/07	001	09/01/07	750	0	2,042.63	2,042.63
	351,047.96				0.00	0	
					0.00		0.00
040000	09/01/07	002	09/01/07	610	0	0.00	2,042.63
	351,047.96				0.00	0	
					0.00		2,042.63
040000	09/05/07	001	09/05/07	750	0	40,000.00	40,000.00
	391,047.96				0.00	0	
					0.00		0.00
040000	10/01/07	001	10/01/07	750	0	2,219.18	2,219.18
	393,267.14				0.00	0	
					0.00		0.00
040000	10/01/07	002	10/01/07	610	0	0.00	2,219.18
	393,267.14				0.00	0	
					0.00		2,219.18
040000	11/01/07	001	11/01/07	750	0	2,338.05	2,338.05
	395,605.19				0.00	0	
					0.00		0.00
040000	11/01/07	002	11/01/07	610	0	0.00	2,338.05
	395,605.19				0.00	0	
					0.00		2,338.05
040000	12/01/07	001	12/01/07	750	0	2,276.08	2,276.08
	397,881.27				0.00	0	
					0.00		0.00
040000	12/01/07	002	12/01/07	610	0	0.00	2,276.08
	397,881.27				0.00	0	
					0.00		2,276.08
040000	01/01/08	001	01/01/08	750	0	2,365.49	2,365.49
	400,246.76				0.00	0	
					0.00		0.00

Payment History Updated										
040000	01/01/08	002	01/02/08	610	0	0.00		2,365.49		
	400,246.75					0.00	0	2,365.49		
040000	02/01/08	001	02/01/08	750	0	0.00		2,379.55		
	402,626.31					0.00	0	0.00		
040000	02/01/08	002	02/01/08	610	0	0.00		2,379.55		
	402,626.31					0.00	0	1,579.55		
040000	03/01/08	001	03/03/08	750	0	0.00		2,239.26		
	404,865.57					0.00	0	0.00		
040000	03/01/08	002	03/03/08	610	0	0.00		2,239.26		
	404,865.57					0.00	0	2,239.26		
1098	M&I MARSHALL AND ILSLEY BANK				5230		LOAN ACCOUNTING			NOTE INQUIRY
	R-6310-001-001 08-14-09				PAGE					
ONOTE#	EFF DATE	TR#	ACT DATE	TCD	REV	PRINCIPAL AMT	TOTAL AMT			
PRIN BAL AFTER	PAYEE				COLLAT AMT	SN/I#	INTEREST AMT			
			COLL/ITEM	BAL						
040000	03/19/08	001	04/04/08	661	0	0.00		0.00		0.00
	404,865.57					0.00	0	0.00		
040000	04/01/08	001	04/02/08	750	0	2,407.01		2,407.01		
	407,272.58					0.00	0	0.00		
040000	04/01/08	002	04/02/08	610	0	0.00		2,407.01		
	407,272.58					0.00	0	2,407.01		
40000	04/01/08	003	04/04/08	400	0	NEW RATE=		7.000		
								NEW BASIS= 3		
040000	05/01/08	001	04/30/08	610	0	0.00		2,361.72		
	407,272.58					0.00	0	0.00		
040000	05/01/08	002	05/22/08	610	0	2,361.72		2,375.76		
	407,272.58					0.00	0	0.00		
040000	05/30/08	001	05/30/08	668	0	2,361.72-		0.02		0.02
	407,272.55					0.00	0	0.00		
040000	06/01/08	001	05/30/08	610	0	0.00		2,375.76		
	407,272.55					0.00	0	2,375.76		
040000	07/01/08	001	07/01/08	610	0	0.00		2,375.76		
	407,272.56					0.00	0	2,375.76		
040000	08/01/08	001	07/30/08	610	0	0.00		2,375.76		
						0.00		0.00		



CHICAGO TITLE INSURANCE COMPANY

CLOSSE: MICHAEL L. GENTLE

DATE OF PRINTING: 01 07 07

TIME OF PRINTING: 15:41

FINAL SETTLEMENT STATEMENT

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

TYPE OF LOAN

☐ 1st ☐ 2nd ☐ 3rd ☐ 4th ☐ 5th ☐ 6th ☐ 7th ☐ 8th ☐ 9th ☐ 10th ☐ 11th ☐ 12th ☐ 13th ☐ 14th ☐ 15th ☐ 16th ☐ 17th ☐ 18th ☐ 19th ☐ 20th ☐ 21st ☐ 22nd ☐ 23rd ☐ 24th ☐ 25th ☐ 26th ☐ 27th ☐ 28th ☐ 29th ☐ 30th ☐ 31st ☐ 32nd ☐ 33rd ☐ 34th ☐ 35th ☐ 36th ☐ 37th ☐ 38th ☐ 39th ☐ 40th ☐ 41st ☐ 42nd ☐ 43rd ☐ 44th ☐ 45th ☐ 46th ☐ 47th ☐ 48th ☐ 49th ☐ 50th ☐ 51st ☐ 52nd ☐ 53rd ☐ 54th ☐ 55th ☐ 56th ☐ 57th ☐ 58th ☐ 59th ☐ 60th ☐ 61st ☐ 62nd ☐ 63rd ☐ 64th ☐ 65th ☐ 66th ☐ 67th ☐ 68th ☐ 69th ☐ 70th ☐ 71st ☐ 72nd ☐ 73rd ☐ 74th ☐ 75th ☐ 76th ☐ 77th ☐ 78th ☐ 79th ☐ 80th ☐ 81st ☐ 82nd ☐ 83rd ☐ 84th ☐ 85th ☐ 86th ☐ 87th ☐ 88th ☐ 89th ☐ 90th ☐ 91st ☐ 92nd ☐ 93rd ☐ 94th ☐ 95th ☐ 96th ☐ 97th ☐ 98th ☐ 99th ☐ 100th

File Number:

2700573

251

Loan Number:

35562154

Mortgage Insurance Case Number

002700573-001 NEWS OF

C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "E.C.C." were paid outside the closing; they are shown here for informational purposes and are not included in the total.

D. NAME OF BORROWER: JAMES E. MCKINNEY

ADDRESS: 611 E. KILBOURN ST.

APRICE JCT

Arlington

E. NAME OF SELLER:

ADDRESS:

F. NAME OF LENDER:

ADDRESS:

MIDWESTERN & TRUST BANK

771 N. WATER STREET

MILWAUKEE

WISCONSIN

53202

G. PROPERTY LOCATION:

611 E. KILBOURN ROAD

APRICE JCT

Arlington

55105

H. SETTLEMENT AGENT:

CHICAGO TITLE INSURANCE COMPANY

ADDRESS:

2501 E. POWER ROAD, SUITE 100

MILWAUKEE

53105

PLACE OF SETTLEMENT:

2501 E. POWER ROAD, SUITE 100

MILWAUKEE

53105

I. SETTLEMENT DATE:

February 6, 2007

J. SUMMARY OF BORROWER'S TRANSACTION

100. GROSS AMOUNT DUE FROM BORROWER:

101. Contract sales price

102. Personal Property

103. Settlement charges to borrower (line 140)

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K. SUMMARY OF SELLER'S TRANSACTION

400. GROSS AMOUNT DUE TO SELLER:

401. Contract sales price

402. Personal Property

403. Settlement charges to seller (line 140)

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122. TOTAL PAID BY/FOR BORROWER

405,458.09

TOTAL REDUCTIONS AMT DUE SELLER

300. CASH AT SETTLEMENT FROM TO BORROWER

500. CASH AT SETTLEMENT TO FROM SELLER

301. Gross amt due from borrower (line 122)

405,458.09

501. Gross amt due to seller (line 422)

302. Less amt paid by for borrower (line 222)

405,458.09

502. Less reductions in amt due seller (line 522)

303. CASH TO FROM TO BORROWER

75,226.67

503. CASH TO FROM FROM SELLER

CASH/3584 8800		2025-17 04/27/2025		PST MCA DE		L SETTLEMENT CHARGES		TIME OF SETTLING: 12:41 DATE OF SETTLING: 02/03/25	
700. TOTAL SALES/BROKER'S COMMISSION based on price:									
Division of Commission (line 700) as follows:									
701.	LB	1						PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
702.	SE	5							
703. Commission paid at Settlement: (Money retained by broker applied to commission E)									
704. Other sales agent charges:									
705. Additional commission:									
800. ITEMS PAYABLE IN CONNECTION WITH LOAN									
801. Loan Origination Fee:									
802. Loan Discount:									
803. Appraisal Fee to KREWE PROPERTY CONSULTANT:									
804. Check Report to KREWE PROPERTY CONSULTANT:								450.00	
805. Land's inspection Fee to KREWE PROPERTY CONSULTANT:								25.00	
806. Mortgage Insurance Application Fee to:								750.00	
807. Assumption Fee to:									
808. Fee to FIRST AMERICAN REAL ESTATE FIDELITY CO.:									
809. Processing Fee to KREWE PROPERTY CONSULTANT:									
810. Completion Fee to KREWE PROPERTY CONSULTANT:								500.00	
811. FIDELITY INSURANCE TO FIRST AMERICAN FIDELITY CO.:								100.00	
812. Fee to KREWE PROPERTY CONSULTANT:								225,000.00	
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE									
901. Interest from:									
902. Mortgage Insurance Premium for:								1.00 months to	
903. Hazard Insurance Premium for:								1.00 years to KREWE PROPERTY CONSULTANT	
904.								625.00	
905.									
1000. RESERVES DEPOSITED WITH LENDER									
1001. Hazard Insurance								1.00 month @6 per month	
1002. Mortgage Insurance								1.00 month @6 per month	
1003. City property taxes								1.00 month @6 per month	
1004. County property taxes								1.00 month @6 per month	
1005. Annual assessments								1.00 month @6 per month	
1006.								1.00 month @6 per month	
1007.								1.00 month @6 per month	
1008. Insurance deduction of:								0.00	
1100. TITLE CHARGES									
1101. Settlement or Closing Fee:								150.00	
1102. Abstract or title search:									
1103. Title examination:									
1104. Title insurance binder:									
1105. Document preparation:									
1106. Notary fees:									
1107. Attorney's fee:									
1108. Title insurance:								264.00	
Includes above name numbers:									
1109. Lender's coverage								5.00, 450.00	
1110. Owner's coverage								5.00	
1111. Indemnification								200.00	
1112. Property inspection fee to:								100.00	
1113. Expense to:								20.00	
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES									
1201. Recording fees: Deed \$ Mortgage \$ Release \$								30.00	
1202. City/county tax/stamps: Deed \$ Mortgage \$									
1203. State tax/stamps: Deed \$ Mortgage \$									
1204.									
1205.									
1300. ADDITIONAL SETTLEMENT CHARGES									
1301. Survey:									
1302. Fee inspection:									
1303. Let L/S 2006 Sales Act 2706.00									
1304.									
1305.									
1306.									
1307.									
1400. TOTAL SETTLEMENT CHARGES (enter on lines 105, Section I, and 805, Section K):								333,210.00	

InterestFirstSM ADJUSTABLE RATE NOTE

(One-Year Treasury Index - Rate Caps)

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR A CHANGE IN MY FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE AND FOR CHANGES IN MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

February 07, 2007
(Date)

Mass
(City)

Arizona
(State)

Parcel 100-04-057A, Apache Junction, AZ 85215

(Property Address)

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 408,456.00 (this amount is called "Principal"), plus interest, to the order of Lender. Lender is M&M Marshall & Miley Bank

I will make all payments under this Note in the form of cash, check or money order

I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 7.000 %. The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will make a payment on the first day of every month, beginning on 04/01/2008. Before the First Principal and Interest Payment Due Date as described in Section 4 of this Note, my payment will consist only of the interest due on the unpaid principal balance of this Note. Thereafter, I will pay principal and interest by making a payment every month as provided below.

I will make my monthly payments of principal and interest beginning on the First Principal and Interest Payment Due Date as described in Section 4 of this Note. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date, and if the payment includes both principal and interest, it will be applied to interest before Principal. If, on March 01, 2037, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 770 N Water Street Milwaukee, WI 53202

or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

My monthly payment will be in the amount of U.S. \$2,392.67 before the First Principal and Interest Payment Due Date, and thereafter will be in an amount sufficient to repay the principal and interest at the rate determined as described in Section 4 of this Note in substantially equal installments by the Maturity Date. The Note Holder will notify me prior to the date of change in monthly payment.

55662154

McKinney, J

MULTISTATE InterestFirst ADJUSTABLE RATE NOTE - ONE-YEAR TREASURY INDEX - Single Family - Fannie Mae Uniform Instrument



FANNIE MAE

Form 3534 1/04

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Page 1 of 3

Initials

KONDAUR/McKinney-00090

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of March, 2012, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an index. The "Index" is the weekly average yield on United States Treasury securities adjusted to a constant maturity of one year as made available by the Federal Reserve Board. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding Three and 250/1000 percentage points (3.250%) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 9.000% or less than 5.000%. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 13.000%.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

Before the effective date of any change in my interest rate and/or monthly payment, the Note Holder will deliver or mail to me a notice of such change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any questions I may have regarding the notice.

(G) Date of First Principal and Interest Payment

The date of my first payment consisting of both principal and interest on this Note (the "First Principal and Interest Payment Due Date") shall be the first monthly payment date after the first Change Date.

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date of my monthly payment unless the Note Holder agrees in writing to those changes. If the partial Prepayment is made during the period when my monthly payments consist only of interest, the amount of the monthly payment will decrease for the remainder of the term when my payments consist only of interest. If the partial Prepayment is made during the period when my payments consist of principal and interest, my partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

55562154

McKinney, J.
Form 5554 11/01

Page 2 of 5

74N 81001

KONDAUR/McKinney-00091

6. LOAN CHARGES

If a law which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan, exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000% of my overdue payment of interest during the period when my payment is interest only, and of principal and interest thereafter. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions read as follows:

200902104

McKinney

Page 1 of 1

McKinney, J.
Form 355-11/06

initials

KONDAUR/McKinney-00092

(A) Until my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument shall read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

(B) When my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument described in Section 11(A) above shall then cease to be in effect, and Uniform Covenant 18 of the Security Instrument shall instead read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

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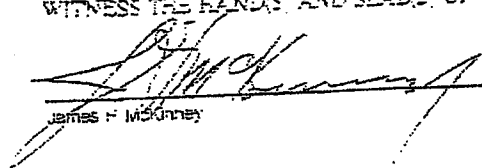
Page 4 of 5

McKinney, J.
Form 1521 1/78

intake

KONDAUR/McKinney-00093

WITNESS THE HANDS AND SEALS OF THE UNDERSIGNED.


James F. McKinney

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower


(Seal)
-Borrower

(Sign Original Only)

25662184

McKinney 3

Form 2551 11/81

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KONDAUR/McKinney-00094

ARM LOAN MODIFICATION AGREEMENT

Mortgagor(s): James H McKinney

Loan Number 55562154-0000

Property Address Parcel 35-04-057A Apache Junction, AZ 85119

Original Loan Terms per Addendum:

Modified Loan Terms:

Note Date February 17, 2007

Note Date February 17, 2007

Original Loan Amount: \$408,458.00

Existing Loan Amount: \$404,865.57

Note Rate: 7.000%

Note Rate: 7.000%

Monthly Payment Effective Date April 01, 2008

Monthly Payment Effective Date May 01, 2008

Monthly Interest: \$2,861.67

Monthly Interest: \$2,561.71

Interest Rate Change Date: March 2012

Interest Rate Change Date: March 2012

Payment Change Date: April 2012

Payment Change Date: April 2012

Periodic Cap: 1.00%

Periodic Cap: 1.00%

Life Time Cap: 13.000%

Life Time Cap: 13.000%

Maturity Date: March 01, 2037

Maturity Date: March 01, 2037

Unused construction funds in the amount of \$1,591.43 have been applied to your principal balance. These funds may NOT be withdrawn in the future.

M&I Marshall and Isley Bank and the undersigned Mortgagor(s), hereby agree to amend the Original Loan Terms of the above Mortgage loan to provide for the following Modified Loan Terms:

Payments

- (A) The monthly interest payment shall take effect as of the date shown above for the "Monthly Payment Effective Date". I will make my monthly payment on the first day of each month beginning on May 01, 2008.
- (B) Each of my initial monthly interest payments will be in the amount of \$2,561.71. This amount may change per the terms of my note.
- (C) The interest rate shall not change until the "Interest Rate Change Date" shown above. The interest rate may change every 12 months thereafter.

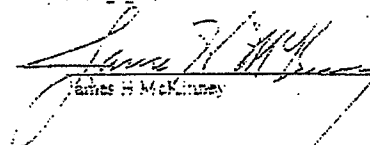
1. The Principal Balance is \$404,865.57

2. All other provisions of the original loan documents or originally executed remain in full force and effect.

Dated: March 15, 2008

M&I Marshall and Isley Bank
Its Agent:
Sonia DeBisoy
Officer

Mortgagor(s):


James H McKinney
Date 3-27-08

CHICAGO TITLE INSURANCE COMPANY

Return To:
M&I Bank FSE
ATTN: Final Documentation Dept
P. O. Box 478
Milwaukee, WI 53204-0478



OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
LAURA DEAN-LYLE

DATE/TIME: 12/09/07 12:07
FEE 525.00
PAGES 19
FEE NUMBER 2007-017572

Prepared By:

LORIAN J. Tenmaker
Vice President
M&I Bank FSE

REFINANCE

(Space Above This Line For Recording Date)

2700571.06

DEED OF TRUST

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 15, 20 and 31. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document which is dated February 07, 2007 together with all Riders to this document.

(B) "Borrower" is James E McKinney, an unmarried man.

Borrower is the trustor under this Security Instrument. Borrower's mailing address is 615 South Wickup, Apache Junction, AZ 85219.

(C) "Lender" is M&I Marshall & Ilsley Bank.

Lender is a Corporation organized and existing under the laws of the State of Wisconsin.

xxxx2154

McKinney, J

ARIZONA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 1002 1/01 (rev. 5/03)

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W-9 MORTGAGE FORMS - 1001-1002

KONDAUR/McKinney-00096

Lender's mailing address is 770 N. Water Street

Milwaukee, WI 53202

Lender is the beneficiary under this Security Instrument.

(D) "Trustee" is CHICAGO TITLE INSURANCE COMPANY

Trustee's mailing address is

2501 S. POWER RD. STE. 101, WILSON, IL 60199

(E) "Note" means the promissory note signed by Borrower and dated February 27, 2007.

The Note states that Borrower owes Lender Four Hundred Eight Thousand Four Hundred Fifty-Eight and 0/100ths Dollars (U.S. \$408,458.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than March 01, 2037.

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower (check box as applicable):

<input checked="" type="checkbox"/> Adjustable Rate Rider	<input type="checkbox"/> Condominium Rider	<input type="checkbox"/> Second Home Rider
<input type="checkbox"/> Balloon Rider	<input type="checkbox"/> Planned Unit Development Rider	<input type="checkbox"/> 1-4 Family Rider
<input type="checkbox"/> VA Rider	<input type="checkbox"/> Bi-weekly Payment Rider	<input type="checkbox"/> Other's (Specify)

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders that have the effect of law as well as all applicable final non-appealable judicial opinions.

(J) "Community Association Dues, Fees and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time.

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KONDAUR/McKinney-00097

time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q. "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender (I) the repayment of the Loan and all renewals, extensions and modifications of the Note; and (II) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust with power of sale, the following described property located in the _____ County _____ of _____ State _____.

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

PARCEL A, OF RECORD OF SURVEY, RECORDED IN BOOK 17 OF SURVEYS, PAGE 341 AND BOOK 17 OF SURVEYS, PAGE 205, RECORDS OF PINAL COUNTY, ARIZONA BEING THE NORTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 1 NORTH, RANGE 5 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, PINAL COUNTY, ARIZONA; EXCEPT ALL THE COAL, OIL, GAS AND OTHER MINERAL DEPOSITS AS RESERVED UNTO THE UNITED STATES OF AMERICA IN THE PATENT TO SAID LAND.

Parcel ID Number 103-04-05706 (covers more)

which currently has the address of

Parcel 103-04-057A

(Street)

Apache Junction

(City), Arizona 85213-0000 (Zip Code)

("Property Address")

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow items

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McKinney, J

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Form 3000 1/90 (Rev. 5/02)

KONDAUR/McKinney-00098

pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payment is insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note, (b) principal due under the Note, (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rent on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5, and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be

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McKinney, J

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in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender at Funds, and in such amounts, that are then required under this Section 9.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. **Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, including payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow items, Borrower shall pay them in the manner provided in Section 9.

Borrower shall promptly discharge any lien which has priority over this Security Instrument, unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith; (c) or defends against enforcement of the lien in legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (d) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the

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McKinney, J.

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den. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this loan.

5. **Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductive levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender but might or might not protect Borrower. Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies. All policies shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due with

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KONDAUR/McKinney-00101

the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's right to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument, and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property: Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repair and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property, if it has reasonable cause. Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable

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McKinney, J

2(AZ) (L200)

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attorneys' fees to protect its interest in the Property and or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property, it makes repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available. If Lender requires Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

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(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds: Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repair and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

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12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in interest of Borrower shall not operate to release the liability of Borrower or any Successor in interest of Borrower. Lender shall not be required to commence proceedings against any Successor in interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successor in interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"); (i) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (ii) is not personally obligated to pay the sums secured by this Security Instrument; and (iii) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorney's fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit, and (b) any sums already collected from Borrower which exceed the permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

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16. **Governing Law; Severability; Rule of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural, and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. **Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.

18. **Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred), without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. **Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument and Borrower's obligation to pay the sums secured by this Security Instrument shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. **Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA.

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requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereinto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

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NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 15 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall give written notice to Trustee of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee shall record a notice of sale in each county in which any part of the Property is located and shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the other persons prescribed by Applicable Law. After the time required by Applicable Law and after publication and posting of the notice of sale, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder for cash at the time and place designated in the notice of sale. Trustee may postpone sale of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it or to the county treasurer of the county in which the sale took place.

23. Release. Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Substitute Trustee. Lender may, for any reason or cause, from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

25. Time of Essence. Time is of the essence in each covenant of this Security Instrument.

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McKinney, F

initials

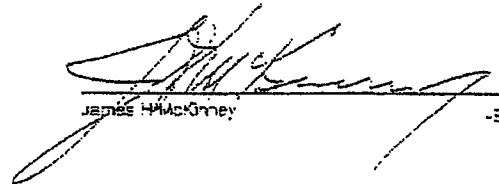
Form 3002 1/84 (Rev. 5/02)

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KONDAUR/McKinney-00108

BY SIGNING BELOW Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:


James H. McKinney (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

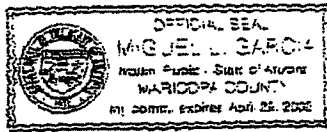
(Seal)
-Borrower

STATE OF ARIZONA, Maricopa

Maricopa County SS:

The foregoing instrument was acknowledged before me this February 07, 2017
by James H McKinney.

My Commission Expires



[Signature]
Notary Public

5(AZ) 0208.

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[Signature] McKinney, J
FORM 3003 11/01 Rev. 6/02.

KONDAUR/McKinney-00110

FIXED/ADJUSTABLE RATE RIDER (One-Year Treasury Index - Rate Caps)

THIS FIXED/ADJUSTABLE RATE RIDER is made this 7th day of February, 2007 and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned "Borrower" to secure Borrower's Fixed/Adjustable Rate Note (the "Note") to Wai Marshall & Tisley Bank

("Lender") of the same date and covering the property described in the Security Instrument and located at:

Parcel 103-04-057A, Apache Junction, AZ 85219
[Property Address]

THE NOTE PROVIDES FOR A CHANGE IN BORROWER'S FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THE NOTE LIMITS THE AMOUNT BORROWER'S ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY

ADDITIONAL COVENANTS, in addition to the covenants and agreements made in the Security Instrument. Borrower and Lender further covenant and agree as follows:

A. ADJUSTABLE RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial fixed interest rate of 7.000 %. The Note also provides for a change in the initial fixed rate to an adjustable interest rate, as follows:

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of March, 2012 and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the weekly average yield on United States Treasury securities adjusted to a constant maturity of one year, as made available by the Federal Reserve Board. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

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MULTISTATE FIXED/ADJUSTABLE RATE RIDER - ONE-YEAR TREASURY INDEX - Single
Family - Fannie Mae Uniform Instrument
Form 3182 1-04

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Initials: *[Signature]*

VMP Mortgage Solutions, Inc.
(800)821-7297

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If the index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date the Note Holder will calculate my new interest rate by adding Three and 250/1000 percentage points

3.250 % to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 9.000 % or less than 5.000 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 13.000 %.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER

1. Until Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument shall read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument.

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however, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

2. When Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument described in Section B1 above shall then cease to be in effect, and the provisions of Uniform Covenant 18 of the Security Instrument shall be amended to read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

xxxx2154

McKinney J

643R (0405)

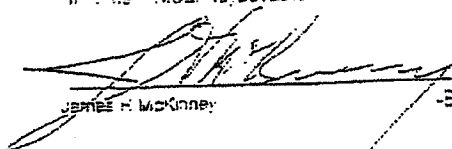
Page 3 of 4

Initials: 

Form 3152 1/01

KONDAUR/McKinney-00113

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Fixed/Adjustable Rate Rider

 _____ JAMES H. McKinney (Seal) -Borrower	_____ (Seal) -Borrower
_____ (Seal) -Borrower	_____ (Seal) -Borrower
_____ (Seal) -Borrower	_____ (Seal) -Borrower
_____ (Seal) -Borrower	_____ (Seal) -Borrower

xxxx2154

McKinney, J

843R (0405)

Page 4 of 4

Form 5182 1/01

KONDAUR/McKinney-00114

To Whom It May Concern:

Re: Account #~~XXXXXX~~2154 Note 40000

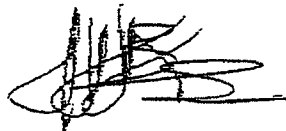
This letter is to inform you of servicing changes that will affect the mortgage loan you currently have with M&I Bank.

Effective August 16, your mortgage loan will be transferred to Kondaur Capital Corporation. As part of the transfer of servicing, your mortgage loan will be serviced by Kondaur Capital Corporation. As a result of this change M&I Bank is required to send you a Notice of Assignment, Sale or Transfer of Servicing Rights which is enclosed. To quickly summarize the Notice:

- After August 16, you will now be making your payments to Kondaur Capital Corporation; nothing else relative to the terms or conditions of your mortgage loan will change.
- The last date you can send a payment to M&I Bank is August 16, 2009. Starting August 17, you should begin making your checks payable to Kondaur Capital Corporation. Mail your payments to PO Box 1449, Orange, CA 92656-1449.

If you have any questions relating to the transfer of servicing of your loan prior to August 16th, please call toll-free 1-888-464-5463, 24 hours a day.

Please see the Notice of Assignment, Sale or Transfer of Servicing Rights, the federal regulatory notification required by the Real Estate Settlement Procedures Act (RESPA), (12 USC 2605).



Dwight H. Brady
Senior Vice President
Loan Services

NOTICE OF ASSIGNMENT, SALE OR TRANSFER OF SERVICING RIGHTS

This notice is to inform you that effective August 16, 2009, the servicing of your mortgage loan is being assigned, sold, or transferred from M&I Marshall & Ilsley Bank, M&I Bank FSB, or Southwest Bank (M&I Bank) to Kondaur Capital Corporation. Servicing is defined as the right to collect payments from you on your mortgage loan.

The assignment, sale or transfer of the servicing of the mortgage loan does not affect any term or condition of the mortgage instruments, other than the terms directly related to the servicing of your loan.

Except in limited circumstances, the law requires that your present Servicer send you this notice at least 15 days before the effective date of transfer or at closing. Your new Servicer must also send you this notice no later than 15 days after the effective date or at closing.

Your present Servicer is M&I Bank. If you have any questions relating to the transfer of servicing from your present Servicer, call M&I Bank toll free at 1-888-464-5463, available 24 Hours.

Your new Servicer will be Kondaur Capital Corporation. The business address for your new Servicer is 1100 Town & Country Suite 1600, Orange, CA 92668. If you have any questions relating to the transfer of servicing to your new Servicer, please call toll free 1-877-767-8866, Monday through Friday from 9:30 a.m. - 5:30 p.m. PST.

The date that your present Servicer will stop accepting payments from you is August 16, 2009. Effective August 17, 2009, your new Servicer will start accepting payments from you. Begin making your checks payable to Kondaur Capital Corporation and mail your payment to PO Box 1449, Orange, CA 92655-1449.

You should also be aware of the following information, which is set out in more detail in Section 6 of the Real Estate Settlement Procedures Act (RESPA), 12 USC 2605:

During the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old Servicer before its due date may not be treated by the new Servicer as late and a late fee may not be imposed on you.

Section 6 of RESPA, 12 USC 2605, gives you certain consumer rights. If you send a "qualified written request" to your loan Servicer concerning the servicing of your loan, your Servicer must provide you with a written acknowledgment within 20 business days of receipt of your request. A "qualified written request" is a written correspondence, other than notice or a payment coupon or other payment medium supplied by the Servicer, which includes your name and account number, and your reasons for the request. Send written requests to 1100 Town & Country Rd, Suite 1600, Orange, CA 92668.

Not later than 60 business days after receiving your request, your Servicer must make any appropriate corrections to your account and must provide you with a written clarification regarding any dispute. During the 60-business-day period, your Servicer may not provide information to a consumer reporting agency concerning any overdue payment related to such period or qualified written request, however this does not prevent the Servicer from initiating foreclosure if proper grounds exist under the mortgage documents.

A business day is a day on which the offices of the business entity are open to the public for carrying on substantially all of its business functions.

Section 6 of RESPA also provides for damages and costs for individuals or classes of individuals in circumstances where Servicers are shown to have violated the requirements of this Section. You should seek legal advice if you believe your rights have been violated.

M&I Bank	July 31, 2009
Present Servicer	Date
Kondaur Capital Corporation	July 31, 2009
Future Servicer	Date



1100 Town & Country Rd.
Suite 1500
Orange, CA 92668
888.KONDAUR phone
877.KONDAUR fax

August 18, 2009

James McKinney
618 S. Wickenburg Road
Apache Junction, AZ 85219

Re: Loan No.: 109147
Secured Property: 618 S. Wickenburg Road, Apache Junction, AZ 85219

Dear Mr. McKinney:

This is the response of Kondaur Capital Corporation ("Kondaur") to your letter dated August 17, 2009 regarding the above-referenced loan and property. A true and correct copy of your letter is attached hereto as Exhibit A.

In your letter, you suggest that there are violations of federal law, including the Truth in Lending Act, in connection with this Mortgage Loan. Notwithstanding the seriousness of the allegations, you provide no real information, you provide no real documentation, and misapply the law to support those allegations. Kondaur denies any allegations of illegality or wrongdoing, and the existence of any TILA violations in connection with the Mortgage Loan. If you have any specific allegations, documentation or other materials that you would like to provide to us in support of your demand, please do so at your earliest convenience.

For the foregoing reason, Kondaur rejects your demand for rescission. This means Kondaur has no legal obligation to take any action to release the security interest in your property; in fact, the security interest remains intact and is fully enforceable.

Yours very truly,

KONDAUR CAPITAL CORPORATION

This communication is from a debt collector but does not imply that Kondaur Capital Corporation is attempting to collect money from anyone whose debt has been discharged pursuant to a bankruptcy proceeding. If you are under the protection of the bankruptcy laws of the United States in such instances, it is intended solely for informational purposes and does not constitute a demand for payment.

KONDAUR/McKinney-00117

WRITTEN NOTICE OF LOAN DISPUTE

James McKinney
618 S. Wickiup Road
Apache Junction, AZ 85219
August 17th, 2009

Kondaur Capital Corporation
1100 Town & Country, Suite 1600
Orange, CA 92868

Re: Account #: 109147, formerly #35662154 hereinafter "Loan" dated February 7, 2007.
Fair Credit Reporting Act (aka FCRA), at 15 U.S.C. § 1681 et seq.
Fair Debt Collection Practices Act (aka FDCPA), 15 U.S.C. § 1692 et seq.
Real Estate Settlement Procedures Act, (known as "RESPA"), 12 U.S.C. § 2601-2617.

Dear Kondaur Capital Corporation:

We received your introductory letter & notices dated August 4, 2009. Thank you.

I am responding to your '30 day' legal letter notice, to notify you I have been disputing this contract since June 4th, 2009 as you know, for the following reasons:

- I conducted a reasonable investigation and inquiry into this matter and concluded that Marshall and Ilsley Bank, et. al, the originator(s) of this transaction, failed to provide all material disclosures correctly made as that term is defined and under 15 U.S.C. § 1635(a); Reg. Z §§ 226.23(a) in a form that I may keep. The notices were ineffective, failed to provide the requisite number on the refinance part of this transaction. M & I Bank itself labeled this transaction on the Deed of Trust as a "Refinance". Why should I not believe them? This part of the transaction is subject to the unconditional right to T.I.L.A. rescind within three years from three years § 1635(b). The remainder if any of the transaction, is subject to U.D.A.P. and other extended Rescission rights as clarified below.

I am also rescinding this loan for the total of mis-allocated fees, a "material" basis to rescind under Reg. Z § 226.23. Tolerance for Disclosures.

I am rescinding this loan within my extended rescission rights, as noted in Gaona v. Town & Country Credit, 324 F.3d 1050, 1053 (8th Cir. 2003); England v. MG Investments, Inc., 93 F. Supp. 2d 718 (S.D. W. Va. 2000); Williams v. Gelt Financial Corp., (In re Williams), 232 B.R. 629 (Bankr. E.D. Pa. 1999) aff'd, 237 B.R. 590 (E.D. Pa. 1999).

I/We rescind as well, for Arizona U.D.A.P. violations by the originating "broker"/banker(s).
Parks v. Marco-Dynamics Inc. 121 Ariz. 517, 591 P.2d 1005.

EXHIBIT A

KONDAUR/McKinney-00118

R.E.S.P.A. requirements designed to protect the consumer were also violated as more continuing Arizona Unfair and Deceptive Acts and Practices (UDAP) by the originators and/or servicers, to my needless detriment and economic loss. Perhaps in discovery, these UDAP acts may have been duplicated in other states as well.

M & I has failed to obey 15 U.S.C. § 1635(b), which states: "*Within 20 calendar days after receipt of a notice of rescission, the creditor shall...take any action necessary to reflect the termination of the security interest.*" They are to affirmably initiate court proceedings within those 20 days if they dispute the rescission, which they failed to do.

Once the Consumer rescinds, the security interest arising by operation of law becomes void automatically. The promissory note is also voided since it is part of the same "transaction," see i.e., 15 U.S.C. § 1635(b) and Reg. Z § 226.23(d)(1).

This Note - months *before* your August 2009 purchase, and before your August 2009 servicing transfer, was Rescinded without reservation. therefore pursuant to FCRA et. al., I dispute any credit reporting on it, as its security interest and terms are utterly void by law, both TILA and UDAP, ab initio.

M & I bank as Servicer and Originator repeatedly failed to follow R.E.S.P.A., T.I.L.A. et. al., and now owes to me against this account:

1. Statutory damages of no less than \$2,000 each for the disclosure violations as provided under 15 U.S.C. § 1640;
2. Statutory damages of \$2,000 for Defendants' failure to respond properly to Plaintiffs' June 4th, 2009 rescission notice;
3. Statutory damages of \$2,000 for each of Defendants' five separate failures to respond properly to Plaintiffs' five ignored specific 12 USC § 2605 Qualified Written Requests for discovery and loan verification.
4. Statutory damages as provided by state law and the Arizona Consumer Fraud Act (AFCA).

These items' non-payment by M & I, due to their mitigating amounts are disputed as well.

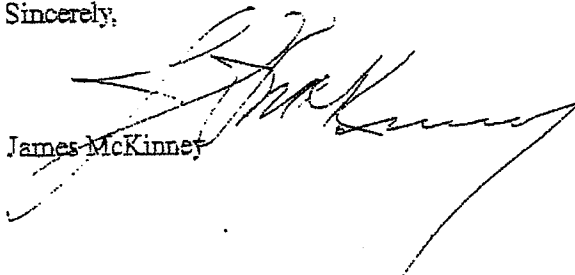
I respectfully demand that you void M & I's illegally initiated foreclosure, as per § 1635(b) you have no security basis on my property after rescission of the refinance section of this loan. The voided Deed of Trust contracted "Refinance" when I was asked to sign it as on the face of the document itself.

Severally, for each of these reasons, this loan is in dispute. In accordance to paragraph 5 of your letter, I am disputing each of these issues within 30 days, in writing.

In violation of FCRA and FDCPA, and in violation of §1635(b), the disputed security-interest based Trustee Sale, was post-rescission publicly recorded intentionally by M & I, further damaging my credit. As the new Servicer, please correct this.

I am damaged daily until these are all corrected. Any negative reporting on it by you while it is in dispute will further damage me. Since you are responsible for this account, please correct these many items immediately. Thank you.

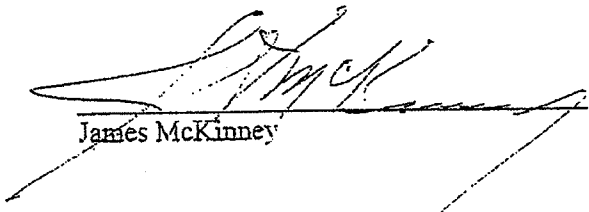
Sincerely,


James McKinney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished by U.S. Mail on this 12 day of Aug, 2009 to:

Express US Mail #EQ 568815360 US
Kondaur Capital Corporation
1100 Town & Country, Suite 1600
Orange, CA 92868


James McKinney

KONDAUR/McKinney-00120



1100 Town & Country Rd
Suite 1000
Orange, CA 92668
888.KONDAUR phone
ETT.KONDAUR fax

August 14, 2009

Mr. James McKinney
618 S. Wickenburg Road
Apache Junction, AZ 85219

Re: Loan Number: 109147
Secured Property: 618 S. Wickenburg Road, Apache Junction, AZ 85219

Dear Mr. McKinney:

This is the response of Kondaur Capital Corporation ("Kondaur") to your letter dated August 15, 2009 which you have titled as a "Notice of Loan Rescission", regarding the above-referenced loan and property. A true and correct copy of your letter is attached hereto as Exhibit 1. As you know, Kondaur has already responded to your letter dated August 17, 2009 (which you titled as a "Written Notice of Loan Dispute") on August 18, 2009. A copy of our response letter is attached hereto as Exhibit 2.

In response to your demand to rescind the aforementioned loan transaction and for Kondaur to "void the foreclosure," Kondaur respectfully declines your request. As you may know, the right to rescind does not apply to "a residential mortgage transaction", pursuant to Reg. Z §226.23 (f)(1). A "residential mortgage transaction" is defined by the Truth in Lending Act in 15 U.S.C. § 1602(a) as a transaction in which "a security interest... is created... to finance the acquisition or initial construction of ...[a] ... dwelling." As you are aware, your loan was a construction loan and therefore is not a rescindable transaction.

Again, based on the information outlined above, Kondaur declines your demand for rescission and will move forward with the foreclosure sale scheduled September 9, 2009, of which you have been previously notified.

Yours very truly,

Paula Chastain, Legal Analyst
KONDAUR CAPITAL CORPORATION

THIS COMMUNICATION IS FROM A DEBT COLLECTOR BUT DOES NOT IMPLY THAT KONDAUR CAPITAL CORPORATION IS ATTEMPTING TO COLLECT MONEY FROM ANYONE WHOSE DEBT HAS BEEN DISCHARGED PURSUANT TO OR WHO IS UNDER THE PROTECTION OF THE BANKRUPTCY LAWS OF THE UNITED STATES. IN SUCH INSTANCES, IT IS INTENDED SOLELY FOR INFORMATIONAL PURPOSES AND DOES NOT CONSTITUTE A DEMAND FOR PAYMENT.

KONDAUR/McKinney-00121

NOTICE OF LOAN RESCISSION

(2nd Notice)

James McKinney
618 S. Wickiup Road
Apache Junction, AZ 85219
August 18, 2009

Kondaur Capital Corporation
QWR Department
1100 Town & Country, Suite 1600
Orange, CA 92868

Re: Account #: 109147, also known / formerly-known-as M & I #35662154 hereinafter 'Loan'
dated February 7, 2007

Please Note. I rescinded this loan without reservation on June 4th, 2009
I canceled this loan without reservation on June 4th, 2009
I hereby reaffirm & restate this rescission with the new Servicer and
Beneficiary this August 18th, 2009.

Also for more detail, each severally:

I have conducted a reasonable investigation and inquiry into this matter and concluded that *Marshall and Ilsley Bank, et. al.* the originator(s) of this transaction, failed to provide all material disclosures correctly made as that term is defined and under 15 U.S.C. § 1635(a); Reg. Z §§ 226.23(a) in a form that I may keep. The notices were ineffective, failed to provide the requisite number. This transaction is subject to the unconditional right to rescind within three years per § 1635(f) & (2). This rescission was valid in full force & effect upon its receipt on June 7th, 2009 by M & I. Any receiving party wishing to contest this Rescission can affirmatively file in court if they believe they have grounds. This party is alleging the following *material* causes of actions, each severally.

I rescinded this loan for the total of mis-allocated fees, a "material" basis to rescind under Reg. Z § 226.23(h)(2). Special rules for foreclosures, Tolerance for Disclosures.

I rescinded this loan within my extended rescission rights, as noted in *Gaona v. Town & Country Credit*, 324 F.3d 1050, 1053 (8th Cir. 2003); *England v. MG Investments, Inc.*, 93 F. Supp. 2d 718 (S.D. W. Va. 2000); *Williams v. Gelt Financial Corp.*, (In re Williams), 232 B.R. 629 (Bankr. E.D. Pa. 1999) aff'd, 237 B.R. 590 (E.D. Pa. 1999).

I/We rescind as well, for Arizona U.D.A.P. violations by the originating "broker"/banker(s). *Parks v. Marco-Dynamics Inc.* 121 Ariz. 517, 591 P.2d 1005.

R.E.S.P.A. requirements designed to protect the consumer were also substantively violated as

KONDAUR/McKinney-00122.

more continuing Arizona Unfair and Deceptive Acts and Practices by the originators, to our needless detriment and economic loss. Perhaps in Discovery, these U.D.A.P. acts may have been duplicated in other states as well.

I respectfully demand that you void your foreclosure, as you have no security basis on my property after rescission. "Within 20 calendar days after receipt of a notice of rescission, the creditor shall...take any action necessary to reflect the termination of the security interest." - 15 U.S.C. § 1635(b).

In compliance with § 1635(b) above, I reasonably request written confirmation by you of your specific termination of the security interest (in Arizona - Deed of Release & Reconveyance) and recorded termination of the related foreclosure to our address no later 20 days and estimated mailing period.

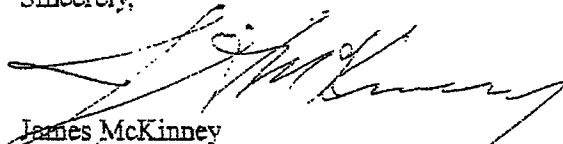
Once the Consumer rescinds, the security interest arising by operation of law becomes void automatically. The promissory note is also voided since it is part of the same "transaction," see i.e., 15 U.S.C. § 1635(b) and Reg. Z § 226.23(d)(1).

You are also to return to me the \$47,000 in estimated interest payments and HUD-1 charged fees I paid on this account, and for this account in this 'loan', within that same 20 days as directed in paragraph §1635(b) below:

"Within 20 days after receipt of a notice of rescission, the creditor shall return to the obligor any money or property given as earnest money, down payment, or otherwise..."

I reasonably expect the Trustee's, Servicer's, and all Real Parties of Interests' full compliance with T.L.L.A., and with extended Rescission without evasion or delay.

Sincerely,

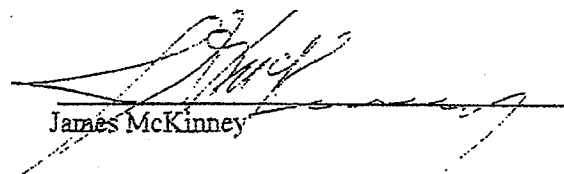


James McKinney

CERTIFICATE OF SERVICE

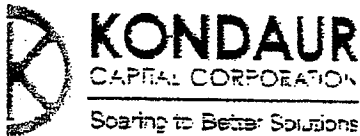
I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished by U.S. Mail on this 18 day of August 2009 to:

Express US Mail #EQ 568815360 US
Kondaur Capital Corporation
1100 Town & Country, Suite 1600
Orange, CA 92868
Phoenix, AZ 85016



James McKinney

KONDAUR/McKinney-00123



1100 Town & Country Rd.
Suite 1500
Orange, CA 92668
888.KONDAUR phone
571.KONDAUR fax

August 18, 2009

James McKinney
616 S. Wicking Road
Apache Junction, AZ 85219

Re: Loan No.: 109147
Secured Property: 616 S. Wicking Road, Apache Junction, AZ 85219

Dear Mr. McKinney:

This is the response of Kondaur Capital Corporation ("Kondaur") to your letter dated August 17, 2009 regarding the above-referenced loan and property. A true and correct copy of your letter is attached hereto as Exhibit A.

In your letter, you suggest that there are violations of federal law, including the Truth in Lending Act, in connection with this Mortgage Loan. Notwithstanding the seriousness of the allegations, you provide no real information, you provide no real documentation, and misapply the law to support those allegations. Kondaur denies any allegations of illegality or wrongdoing, and the existence of any TILA violations in connection with the Mortgage Loan. If you have any specific allegations, documentation or other materials that you would like to provide to us in support of your demand, please do so at your earliest convenience.

For the foregoing reason, Kondaur rejects your demand for rescission. This means Kondaur has no legal obligation to take any action to release the security interest in your property; in fact, the security interest remains intact and is fully enforceable.

Yours very truly,


KONDAUR CAPITAL CORPORATION

This communication is from a debt collector but does not imply that Kondaur Capital Corporation is attempting to collect money from anyone whose debt has been discharged pursuant to, or who is under the protection of, the bankruptcy laws of the United States; in such instances, it is intended solely for informational purposes and does not constitute a demand for payment.

KONDAUR/McKinney-00124
EXHIBIT

FAX COVER SHEET

Number of pages including cover sheet 4

Attention: McKinney

Company: _____

Phone: _____

Fax: _____

Comments: _____

Date: _____

From: T.H. McKinney

Company: _____

Phone: _____

2950 W. Apache Trail
Apache Junction, AZ 85220
P 480.671.6999
F. 480.671.6664
impress1170@officemax.com

OfficeMax
impress
PRINT & DOCUMENT SERVICES

EXHIBIT 4

KONDAUR/McKinney-00125

WRITTEN NOTICE OF LOAN DISPUTE

James McKinney
6185 Winkler Road
Apache Junction, AZ 85219
August 17th, 2009

Kondaaur Capital Corporation
1100 Town & Country, Suite 1600
Orange, CA 92868

Re: Account #: 109147, formerly #25662154 hereinafter "Loan" dated February 7, 2007.
Fair Credit Reporting Act (aka FCRA), at 15 U.S.C. § 1681 et seq.
Fair Debt Collection Practices Act (aka FDCPA), 15 U.S.C. § 1692 et seq.
Real Estate Settlement Procedures Act (known as "RESPA"), 12 U.S.C. § 2601-2617.

Dear Kondaaur Capital Corporation:

We received your introductory letter & notices dated August 4, 2009. Thank you.

I am responding to your "30 day" legal letter notice, to notify you I have been disputing this contract since June 4th, 2009 as you know, for the following reasons:

I conducted a reasonable investigation and inquiry into this matter and concluded that Marshall and Lisley Bank, et al, the originator(s) of this transaction, failed to provide all material disclosures correctly made as that term is defined and under 15 U.S.C. § 1635(a); Reg. Z §§ 226.23(a) in a form that I may keep. The notices were ineffective, failed to provide the requisite number on the refinance part of this transaction. M & I Bank itself labeled this transaction on the Deed of Trust as a "Refinance". Why should I not believe them? This part of the transaction is subject to the unconditional right to T.L.L.A. rescind within three years from three years § 1635(b). The remainder if any of the transaction, is subject to U.D.A.P. and other extended Rescission rights as clarified below.

I am also rescinding this loan for the total of mis-allocated fees, a "material" basis to rescind under Reg. Z § 226.23. Tolerance for Disclosures.

I am rescinding this loan within my extended rescission rights, as noted in *Gaona v. Town & Country Credit*, 324 F.3d 1050, 1053 (8th Cir. 2003); *England v. MG Investments, Inc.*, 93 F. Supp. 2d 718 (S.D. W. Va. 2000); *Williams v. Gelt Financial Corp.*, (In re Williams), 232 B.R. 629 (Bankr. E.D. Pa. 1999) aff'd, 237 B.R. 590 (E.D. Pa. 1999).

I/We rescind as well, for Arizona U.D.A.P. violations by the originating "broker"/banker(s).
Parks v. Marco-Dynamics Inc., 121 Ariz. 517, 591 P.2d 1005.

KONDAUR/McKinney-00126

R.E.S.P.A. requirements designed to protect the consumer were also violated as more continuing Arizona Unfair and Deceptive Acts and Practices (UDAP) by the originators and/or servicers, to my needless detriment and economic loss. Perhaps in discovery, these UDAP acts may have been implicated in other states as well.

M & I has failed to obey 15 U.S.C. § 1635(b), which states: "Within 30 calendar days after receipt of a notice of rescission, the creditor shall...take any action necessary to reflect the termination of the security interest." They are to affirmably initiate court proceedings within those 30 days if they dispute the rescission, which they failed to do.

Once the Consumer rescinds, the security interest arising by operation of law becomes void automatically. The promissory note is also voided since it is part of the same "transaction," see i.e., 15 U.S.C. § 1635(b) and Reg. Z § 226.23(d)(1).

This Note - months before your August 2009 purchase, and before your August 2009 servicing transfer, was Rescinded without reservation, therefore pursuant to FCRA et al., I dispute any credit reporting on it, as its security interest and terms are utterly void by law, both TILA and UDAP, ab initio.

M & I bank as Servicer and Originator repeatedly failed to follow R.E.S.P.A., TILA et al. and now owes to me against this account:

1. Statutory damages of no less than \$2,000 each for the disclosure violations as provided under 15 U.S.C. § 1640;
2. Statutory damages of \$2,000 for Defendants' failure to respond properly to Plaintiff's June 4th, 2009 rescission notice;
3. Statutory damages of \$2,000 for each of Defendants' five separate failures to respond properly to Plaintiff's five ignored specific 12 USC § 2605 Qualified Written Requests for discovery and loan verification;
4. Statutory damages as provided by state law and the Arizona Consumer Fraud Act (AFCFA).

These items' non-payment by M & I due to their mitigating amounts are disputed as well.

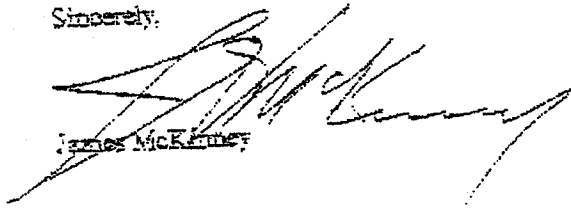
I respectfully demand that you void M & I's illegally initiated foreclosure, as per § 1635(b) you have no security basis on my property after rescission of the refinance section of this loan. The voided Deed of Trust contracted "Refinance" when I was asked to sign it as on the face of the document itself.

Severally, for each of these reasons, this loan is in dispute. In accordance to paragraph 5 of your letter, I am disputing each of these issues within 30 days, in writing.

In violation of FCRA and FDICPA, and in violation of § 1635(b), the disputed security-interest-based Trustee Sale, was post-rescission publicly recorded intentionally by M & I, further damaging my credit. As the new Servicer, please correct this.

I am damaged daily until these are all corrected. Any negative reporting on it by you while it is in dispute will further damage me. Since you are responsible for this account, please correct these many items immediately. Thank you.

Sincerely,


James McKinney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished by certified U.S. Mail on this _____ day of _____, 2009 to:

Certified Mail Return Receipt #
Kondaur Capital Corporation
1100 Town & Country, Suite 1600
Orange, CA 92868

James McKinney

KONDAUR/McKinney-00128

Fischer, Cynthia E. (Secy-Phx-LT)

From: Barton, Julie R. (Assoc-Phx-LT)
Sent: Monday, July 11, 2011 1:19 PM
To: PHXALL
Subject: Team GT: July 12th Community Service Event (Ryan House)
Attachments: 329882565_v_1_Waiver form for Ryan House Community Event.DOC.DOC

This is just a reminder that the Ryan House event is scheduled to take place tomorrow. Ryan House's mission is to provide respite and end-of-life care for children with life-threatening conditions, and is one of only two of its kind in the entire country. **To the extent that you want to volunteer (even if you have not previously RSVP'd to me), please fill out the attached waiver form and return it to Sue Kulson by noon on July 12.**

Volunteers/Logistics: Please join us in 7A at 4 p.m. for the community service event and a pizza dinner. The event is scheduled to last until 7 p.m. Any staff member that participates in the event should first obtain confirmation from their supervising attorney on the day of the event that their workload will permit them to leave work prior to 5 p.m. Volunteers are permitted to wear their GT community service polos and **JEANS** to work tomorrow.

GT Sponsorship: GT has provided the funds to purchase the materials necessary to complete the project for Ryan House, as well as the pizza dinner for volunteers. Thanks, GT!

Donations: To the extent that any of you cannot participate, but would like to make a tax-deductible donation to Ryan House, any donation would be appreciated, in particular gift cards to Target, Wal-Mart or Walgreens or checks payable to "Ryan House" with a designation of GT July 12th Event in the memo portion. **If you choose to make a donation, please deliver the gift card or check to me or Sue Kulson by 2 p.m. on July 12th.** Please make sure you also provide an address with your donation so that Ryan House can send the appropriate letter acknowledging the donation for tax purposes to you.

Please contact Karl, Sue or me if you have any questions.

Thanks!

Julie

Julie R. Barton
Associate
Greenberg Traurig, LLP | 2375 E. Camelback Rd. Suite 700 | Phoenix, AZ 85016
Tel 602.445.8416 | Fax 602.445.8686
bartonjr@gtlaw.com | www.gtlaw.com



PLEASE CONSIDER THE ENVIRONMENT BEFORE PRINTING THIS EMAIL

7/11/2011

ATTACHMENT B

CORRECTED DECLARATION OF D. PETER BAI

D. Peter Bai states as follows:

1. I am over the age of majority and am an Asset Manager at Kondaur Capital Corp. ("Kondaur Capital") and in such capacity I have personal knowledge of the matters set forth herein.
2. Pursuant to an agreement between Kondaur and M&I Marshall & Ilsley Bank ("M&I"), M & I Marshall & Ilsley Bank executed an allonge (the "McKinney Allonge") by which it assigned to Kondaur Capital (the "Assignee") M&I's rights under that certain promissory note signed by James McKinney ("McKinney") in the face amount of \$408,458.00 (the "McKinney Note"). Together with the McKinney Allonge, M&I also executed and recorded an Assignment of Deed of Trust dated August 4, 2009 ("McKinney Assignment"), by which it assigned to the Assignee M&I's interest in the deed of trust (the "McKinney Trust Deed") securing the McKinney Note. The original McKinney Allonge and McKinney Note are in the possession of Kondaur Capital. Accurate copies of the McKinney Allonge, the McKinney Note, the McKinney Assignment, and the McKinney Trust Deed are attached as Exhibits 1, 2, 3, and 4 respectively.
3. The McKinney Trust Deed encumbers the property located at 618 S. Wickiup, Apache Junction, Pinal County, Arizona 85219, Parcel #103-04-057A (the "Subject Property").

4. It is my understanding that the Subject Property is, in fact, located in Pinal County, Arizona.

5. At the time of the Assignment, the McKinney Note was in default and a non-judicial foreclosure under the McKinney Trust Deed had been commenced by the "Trustee", Larry O. Folks of Folks & O'Connor, PLLC, who had scheduled the "Trustee's Sale" at the main entrance to the Pinal County Superior Court Building in Florence, Arizona on September 9, 2009 at 9:04 AM.

6. After the Assignment and before the September 9, 2009 Trustee's Sale, McKinney began contacting the Assignee. The Assignee, through me and others, commenced and continued those communications through early January of 2010 (the "McKinney Communications"). Examples of the McKinney Communications, including e-mails and letters, are attached as Exhibit 5.

7. On September 9, 2009, McKinney served the Complaint in *McKinney v. Kondaur Capital Corporation, et al.*, Pinal County Docket CV2009-03764 (the "Pinal Lawsuit") on Kondaur Capital Corporation, Kondaur Venture X, LLC, and Kondaur Capital Trust Series 2009-3 (collectively, "Kondaur Defendants").

8. In an effort to resolve McKinney's various complaints, the Assignee instructed the Trustee to postpone the Trustee's Sale four times; with the last postponement being from December 15, 2009 until January 5, 2010. During this process, McKinney granted the Kondaur Defendants an extension of time to answer the Complaint in the Pinal Lawsuit.

9. Among the McKinney Correspondence is a December 26, 2009 letter from McKinney to me and others at the Kondaur Defendants (the "December 26th Letter"). The street address and facsimile numbers listed on the December 26th Letter for the Kondaur Defendants are accurate. The Kondaur Defendants responded to the December 26th Letter with written correspondence sent by e-mail on January 4, 2010. [Exhibit 5 at Bates No. Kondaur/McKinney 00039-41]

10. On January 4, 2010, the Kondaur Defendants received by facsimile copy of McKinney's Application for Temporary Restraining Order, which bore no docket number, judge assignment nor any indication of the date, time, or place when the unnamed judge would consider McKinney's request (the "Blank Application"). [Exhibit 6]

11. The Blank Application is the first time the Kondaur Defendants learned that McKinney had apparently filed a second lawsuit; this time in Maricopa County (the "Maricopa Lawsuit").

12. On January 5, 2010 at approximately 9:18 a.m., Pacific Time Zone, I received a telephone call from a man whom I know as Dow McKinney ("Dow"). During that telephone call, Dow claimed that a temporary restraining order had been issued in Maricopa County Superior Court Case No. CV2010-090122.

13. The first time the Kondaur Defendants received a copy of the temporary restraining order, and thereby confirmed its issuance, was on January 6, 2010 when the Trustee e-mailed a copy of the minute entry granting McKinney's request for a temporary restraining order in the Maricopa Lawsuit (the "TRO"). [Exhibit 7]

14. In addition to the attorney's fees incurred by the Kondaur Defendants in responding to the Maricopa Lawsuit, the delay damages caused by the TRO's delay of the Trustec's Sale include, carrying costs of \$61.86 per day, as well as the expenses resulting from a declining market.

15. The Subject Property is located in Pinal County where McKinney filed the Pinal Lawsuit against the Kondaur Defendants who request that the Maricopa Lawsuit be transferred to Pinal County.

16. The Exhibits referenced herein are attached to my Declaration dated January 15, 2010.

I declare under penalty of perjury that all of the foregoing is true and accurate.

Executed on January 25, 2010.



Signature

DECLARATION OF D. PETER BAI

D. Peter Bai states as follows:

1. I am over the age of majority and am an Asset Manager at Kondaur Capital Corp. ("Kondaur Capital") and in such capacity I have personal knowledge of the matters set forth herein.
2. Pursuant to an agreement between Kondaur and M&I Marshall & Ilsley Bank ("M&I"), M & I Marshall & Ilsley Bank executed an allonge (the "McKinney Allonge") by which it assigned to Kondaur Capital (the "Assignee") M&I's rights under that certain promissory note signed by James McKinney ("McKinney") in the face amount of \$408,458.00 (the "McKinney Note"). Together with the McKinney Allonge, M&I also executed and recorded an Assignment of Deed of Trust dated August 4, 2009 ("McKinney Assignment"), by which it assigned to the Assignee M&I's interest in the deed of trust (the "McKinney Trust Deed") securing the McKinney Note. The original McKinney Allonge and McKinney Note are in the possession of Kondaur Capital. Accurate copies of the McKinney Allonge, the McKinney Note, the McKinney Assignment, and the McKinney Trust Deed are attached as Exhibits 1, 2, 3, and 4 respectively.
3. The McKinney Trust Deed encumbers the property located at 618 S. Wickiup, Apache Junction, Pinal County, Arizona 85219, Parcel #103-04-057A (the "Subject Property").

4. It is my understanding that the Subject Property is, in fact, located in Pinal County, Arizona.

5. At the time of the Assignment, the McKinney Note was in default and a non-judicial foreclosure under the McKinney Trust Deed had been commenced by the "Trustee", Larry O. Folks of Folks & O'Connor, PLLC, who had scheduled the "Trustee's Sale" at the main entrance to the Pinal County Superior Court Building in Florence, Arizona on September 9, 2009 at 9:04 AM.

6. After the Assignment and before the September 9, 2009 Trustee's Sale, McKinney began contacting the Assignee. The Assignee, through me and others, commenced and continued those communications through early January of 2010 (the "McKinney Communications"). Examples of the McKinney Communications, including e-mails and letters are attached as Exhibit 5.

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9. Among the McKinney Correspondence is a December 26, 2009 letter from McKinney to me and others at the Kondaur Defendants (the "December 26th Letter"). The street address and facsimile numbers listed on the December 26th Letter for the Kondaur Defendants are accurate. The Kondaur Defendants responded to the December 26th Letter with written correspondence sent by e-mail on January 4, 2010. [Exhibit 5 at Bates Kondaur/McKinney 00039-41]

10. On January 4, 2010, the Kondaur Defendants received by facsimile copy of McKinney's Application for Temporary Restraining Order, which bore no docket number, judge assignment nor any indication of the date, time, or place when the unnamed judge would consider McKinney's request (the "Blank Application"). [Exhibit 6]

11. The Blank Application is the first time the Kondaur Defendants learned that McKinney had apparently filed a second lawsuit; this time in Maricopa County (the "Maricopa Lawsuit").

12. The first time the Kondaur Defendants learned of the docket number or judge assignment in the Maricopa Lawsuit was on January 6, 2010 when the Trustee e-mailed a copy of the minute entry granting McKinney's request for a temporary restraining order in the Maricopa Lawsuit (the "TRO"). [Exhibit 7]

13. In addition to the attorney's fees incurred by the Kondaur Defendants in responding to the Maricopa Lawsuit, the delay damages caused by the TRO's delay of the Trustee's Sale include, carrying costs of \$61.86 per day, as well as the expenses resulting from a declining market.

14. The Subject Property is located in Pinal County where McKinney filed the Pinal Lawsuit against the Kondaur Defendants who request that the Maricopa Lawsuit be transferred to Pinal County.

I declare under penalty of perjury that all of the foregoing is true and accurate.

Executed on January ____, 2010.

Signature

Exhibit 1

ALLONGE

PAY TO THE ORDER OF: _____

A promissory for loan account number: 35662154-40000 for \$408,458.00

Covering property located at:
618 S Wickiup Rd., APACHE JUNCTION, AZ, 85219, between JAMES MCKINNEY
and M&I Marshall & Ilsley Bank WITHOUT RECOURSE.

BY: 

JOHN A. MURONI, VICE PRESIDENT

KONDAUR/McKinney-00159

Exhibit 2

InterestFirstSM ADJUSTABLE RATE NOTE

(One-Year Treasury Index - Rate Caps)

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR A CHANGE IN MY FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE AND FOR CHANGES IN MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

February 07, 2007
[Date]

Mesa
[City]

Arizona
[State]

Parcel 103-04-057A, Apache Junction, AZ 85219

[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 408,458.00 (this amount is called "Principal"), plus interest, to the order of Lender. Lender is M&I Marshall & Ilsley Bank

I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 7.000 %. The interest rate I will pay may change in accordance with Section 4 of this Note. The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will make a payment on the first day of every month, beginning on 04/01/2008 . Before the First Principal and Interest Payment Due Date as described in Section 4 of this Note, my payment will consist only of the interest due on the unpaid principal balance of this Note. Thereafter, I will pay principal and interest by making a payment every month as provided below.

I will make my monthly payments of principal and interest beginning on the First Principal and Interest Payment Due Date as described in Section 4 of this Note. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date, and if the payment includes both principal and interest, it will be applied to interest before Principal. If, on March 01, 2037 , I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 770 N Water Street Milwaukee, WI 53202

or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

My monthly payment will be in the amount of U.S. \$2,382.67 before the First Principal and Interest Payment Due Date, and thereafter will be in an amount sufficient to repay the principal and interest at the rate determined as described in Section 4 of this Note in substantially equal installments by the Maturity Date. The Note Holder will notify me prior to the date of change in monthly payment.

35662154

McKinney, J

MULTISTATE InterestFirst ADJUSTABLE RATE NOTE - ONE-YEAR TREASURY INDEX - Single Family - Fannie Mae Uniform Instrument

VMP-171N (0210).01

Form 3531 11/01

VMP Mortgage Solutions, Inc. (800) 621-7201

Page 1 of 5

Initials: 

KONDAUR/McKinney-00153

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 or 5 of this Note.

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of March, 2012, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the weekly average yield on United States Treasury securities adjusted to a constant maturity of one year, as made available by the Federal Reserve Board. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding Three and 250/1000 percentage points (3.250%) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 9.000% or less than 5.000%. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 13.000%.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

Before the effective date of any change in my interest rate and/or monthly payment, the Note Holder will deliver or mail to me a notice of such change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

(G) Date of First Principal and Interest Payment

The date of my first payment consisting of both principal and interest on this Note (the "First Principal and Interest Payment Due Date") shall be the first monthly payment date after the first Change Date.

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date of my monthly payment unless the Note Holder agrees in writing to those changes. If the partial Prepayment is made during the period when my monthly payments consist only of interest, the amount of the monthly payment will decrease for the remainder of the term when my payments consist only of interest. If the partial Prepayment is made during the period when my payments consist of principal and interest, my partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

35662154

VMD-171N (0210)01

Page 2 of 5

McKinney, J
Form 3531 11/01

INWAC

KONDAUR/McKinney-00154

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15.000 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000% of my overdue payment of interest, during the period when my payment is interest only, and of principal and interest thereafter. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions read as follows:

35662154

VMP-171N (0210).01

Page 3 of 5

McKinney, J
Form 3531 1.1/91

Initialed: 

KONDAUR/McKinney-00155

(A) Until my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument shall read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

(B) When my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument described in Section 11(A) above shall then cease to be in effect, and Uniform Covenant 18 of the Security Instrument shall instead read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

35662154

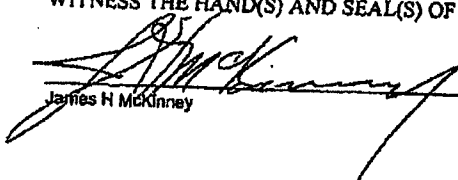
VMP-171N (02/00) 01

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McKinney, J
Form 3531 1/2/01

KONDAUR/McKinney-00156

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.


James H McKinney (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

[Sign Original Only]

35662154

VMP-171N (0210).01

Page 5 of 5

McKinney, J

Form 3531 11/01

KONDAUR/McKinney-00157

ARM LOAN MODIFICATION AGREEMENT

Mortgagor(s): James H McKinney

Loan Number: 35662154-40000

Property Address: Parcel 103-04-057A Apache Junction, AZ 85219

Original Loan Terms per Addendum:

Note Date: February 07, 2007

Original Loan Amount: \$408,458.00

Note Rate: 7.000%

Monthly Payment Effective Date: April 01, 2008

Monthly Interest: \$2,382.67

Interest Rate Change Date: March, 2012

Payment Change Date: April, 2012

Periodic Cap: 2.00%

Life Time Cap: 13.000%

Maturity Date: March 01, 2037

Modified Loan Terms:

Note Date: February 07, 2007

Existing Loan Amount: \$404,865.57

Note Rate: 7.000%

Monthly Payment Effective Date: May 01, 2008

Monthly Interest: \$2,361.72

Interest Rate Change Date: March, 2012

Payment Change Date: April, 2012

Periodic Cap: 2.00%

Life Time Cap: 13.000%

Maturity Date: March 01, 2037

Unused construction funds in the amount of \$3,592.43 have been applied to your principal balance. These funds may NOT be withdrawn in the future.

M&I Marshall and Ilsley Bank, and the undersigned Mortgagor(s) hereby agree to amend the Original Loan Terms of the above Mortgage loan to provide for the following Modified Loan Terms:

1. Payments

- (A) The monthly interest payment shall take effect as of the date shown above for the "Monthly Payment Effective Date". I will make my monthly payment on the first day of each month beginning on May 01, 2008.
- (B) Each of my initial monthly interest payments will be in the amount of \$2,361.72. This amount may change per the terms of my note.
- (C) The interest rate shall not change until the "Interest Rate Change Date" shown above. The interest rate may change every 12 months thereafter.

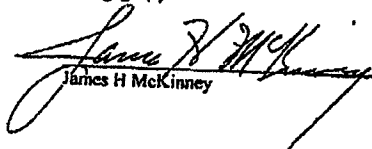
2. The Principal Balance is \$404,865.57.

3. All other provisions of the original loan documents as originally executed remain in full force and effect.

Dated: March 19, 2008

M&I Marshall and Ilsley Bank
Its Agent;
Sonia DeBlacy
Officer

Mortgagor(s):


James H McKinney
Date 3-27-08

KONDAUR/McKinney-00158

Exhibit 3

3566204

SECURITY TITLE AGENCY

14-83403
Record and Return to:

KONDAUR CAPITAL CORPORATION
1100 TOWN & COUNTRY ROAD
SUITE 1600
ORANGE, CA 92668



OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
LAURA DEAN-LYLE

DATE/TIME: 09/02/09 1624
FEE: \$14.00
PAGES: 2
FEE NUMBER: 2009-091736

ASSIGNMENT OF DEED OF TRUST

FOR VALUE RECEIVED, M&I MARSHALL & ILSLEY BANK, a Wisconsin Corporation, its successors and assigns, hereby assigns and transfers to KONDAUR CAPITAL CORPORATION, its successors and assigns, all its right title and interest in and to a certain mortgage executed by, JAMES H MCKINNEY, AN UNMARRIED MAN, Dated FEBRUARY 7, 2007, to M&I MARSHALL & ILSLEY BANK, and recorded on FEBRUARY 9, 2007, IN DOCUMENT NUMBER 2007-017572 of Official Records in the Office of the County Recorder of PINAL, which encumbers the following described property, to-wit:

Legal Description:
SEE ATTACHED LEGAL

Dated this 4TH Day of AUGUST, 2009.

M&I MARSHALL & ILSLEY BANK

BY: [Signature]
John A. Muroi Vice President

ATTEST: [Signature]
Cheri M. Mann, Assistant Vice President

STATE OF WISCONSIN)
County of Waukesha)SS.

The foregoing Assignment of Deed of Trust was sworn to, subscribed and acknowledged before me this 4th day of August, 2009, by John A. Muroi and Cheri M. Mann, who is personally know to me to be the Vice President and Assistant Vice President of M&I MARSHALL & ILSLEY BANK, and that said instrument was signed on behalf of said corporation.



098xxxx2154-40000
This instrument was drafted by:
CAROLYN KRUEGER

[Signature]
MATTHEW PLOTZ, Notary Public
My commission will expire October 16, 2011

EXHIBIT B

KONDAUR/McKinney-00046

Exhibit 4

CHICAGO TITLE INSURANCE COMPANY

Return To:
M&I Bank FSB
ATTN: Final Documentation Dept.
P. O. Box 478
Milwaukee, WI 53201-0478

Prepared By:

Lorann J. Ten Haken
Vice President
M&I Bank FSB



OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
LAURA DEAN-LYTTLE

DATE/TIME: 02/09/07 1207
FEE: \$28.00
PAGES: 19
FEE NUMBER: 2007-017572

REFINANCE

2700571.06 [Space Above This Line For Recording Data]

DEED OF TRUST

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

- (A) "Security Instrument" means this document, which is dated February 07, 2007 together with all Riders to this document.
(B) "Borrower" is James H McKinney, an unmarried man

Borrower is the trustor under this Security Instrument. Borrower's mailing address is 618 South Wickiup, Apache Junction, AZ 85219
(C) "Lender" is M&I Marshall & Ilsley Bank

Lender is a Corporation
organized and existing under the laws of the State of Wisconsin

xxxx2154

McKinney, J

ARIZONA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3003 1/01 (rev. 6/02)

12442-6(AZ) (0206)

Page 1 of 15

VMP MORTGAGE FORMS - (600) 521-7281

KONDAUR/McKinney-00162

Lender's mailing address is 770 N Water Street
Milwaukee, WI 53202

Lender is the beneficiary under this Security Instrument.

(D) "Trustee" is CHICAGO TITLE INSURANCE COMPANY

2500 S POWER RD STE 101, MESA, AZ 85209

Trustee's mailing address is

(E) "Note" means the promissory note signed by Borrower and dated February 07, 2007
The Note states that Borrower owes Lender Four Hundred Eight Thousand Four Hundred
Fifty-Eight and 0/100ths Dollars
(U.S. \$408,458.00) plus interest. Borrower has promised to pay this debt in regular Periodic
Payments and to pay the debt in full not later than March 01, 2037

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the
Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges
due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following
Riders are to be executed by Borrower [check box as applicable]:

<input checked="" type="checkbox"/> Adjustable Rate Rider	<input type="checkbox"/> Condominium Rider	<input type="checkbox"/> Second Home Rider
<input type="checkbox"/> Balloon Rider	<input type="checkbox"/> Planned Unit Development Rider	<input type="checkbox"/> 1-4 Family Rider
<input type="checkbox"/> VA Rider	<input type="checkbox"/> Biweekly Payment Rider	<input type="checkbox"/> Other(s) [specify]

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations,
ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final,
non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other
charges that are imposed on Borrower or the Property by a condominium association, homeowners
association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by
check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic
instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit
or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller
machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse
transfers.

(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid
by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i)
damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the
Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the
value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on,
the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the
Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its
implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to
time.

22MB-8(AZ) (0206)

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initialed

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KONDAUR/McKinney-00163

time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the _____ County _____ of _____ Final _____

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

PARCEL A, OF RECORD OF SURVEY, RECORDED IN BOOK 17 OF SURVEYS, PAGE 041 AND BOOK 17 OF SURVEYS, PAGE 205, RECORDS OF PINAL COUNTY, ARIZONA BEING THE NORTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 1 NORTH, RANGE 8 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, PINAL COUNTY, ARIZONA; EXCEPT ALL THE COAL, OIL, GAS AND OTHER MINERAL DEPOSITS AS RESERVED UNTO THE UNITED STATES OF AMERICA IN THE PATENT TO SAID LAND.

Parcel ID Number: 103-04-05706 (covers more)

which currently has the address of

Parcel 103-04-057A

[Street]

Apache Junction

[City], Arizona 85219-0000 [Zip Code]

("Property Address"):

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items

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McKinney, J

UAD-6(AZ) (0200)

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pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be

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McKinney, J

in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. **Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the

lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with



McKinney, J

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the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. **Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. **Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. **Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. **Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable

attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

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(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. **Joint and Several Liability; Co-signers; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. **Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. **Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

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16. **Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. **Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.

18. **Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. **Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. **Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA

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requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall give written notice to Trustee of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee shall record a notice of sale in each county in which any part of the Property is located and shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the other persons prescribed by Applicable Law. After the time required by Applicable Law and after publication and posting of the notice of sale, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder for cash at the time and place designated in the notice of sale. Trustee may postpone sale of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it or to the county treasurer of the county in which the sale took place.

23. Release. Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Substitute Trustee. Lender may, for any reason or cause, from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

25. Time of Essence. Time is of the essence in each covenant of this Security Instrument.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

James H McKinney (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

STATE OF Arizona, Maricopa

Maricopa County ss:

The foregoing instrument was acknowledged before me this February 07, 2007
by James H' McKinney .

My Commission Expires:



[Signature]
Notary Public

MAP-8(AZ) (0208)

xxxx2154

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Initials: *[Signature]* McKinney, J
Form 3003 1/01 (rev. 6/02)

KONDAUR/McKinney-00176

FIXED/ADJUSTABLE RATE RIDER

(One-Year Treasury Index - Rate Caps)

THIS FIXED/ADJUSTABLE RATE RIDER is made this 7th day of February, 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Fixed/Adjustable Rate Note (the "Note") to M&I Marshall & Ilsley Bank

("Lender") of the same date and covering the property described in the Security Instrument and located at:

Parcel 103-04-057A, Apache Junction, AZ 85219
[Property Address]

THE NOTE PROVIDES FOR A CHANGE IN BORROWER'S FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THE NOTE LIMITS THE AMOUNT BORROWER'S ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. ADJUSTABLE RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial fixed interest rate of 7.000 %. The Note also provides for a change in the initial fixed rate to an adjustable interest rate, as follows:

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of March, 2012, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the weekly average yield on United States Treasury securities adjusted to a constant maturity of one year, as made available by the Federal Reserve Board. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

xxxxx2154 McKinney, J
MULTISTATE FIXED/ADJUSTABLE RATE RIDER - ONE-YEAR TREASURY INDEX - Single
Family - Fannie Mae Uniform Instrument
Form 3182 1/01

VMP-843R (0405)

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Initials: 

VMP Mortgage Solutions, Inc.
(800)521-7291

KONDAUR/McKinney-00177

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding **Three and 250/1000** (**3.250 %**) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than **9.000 %** or less than **5.000 %**. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than **13.000 %**.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER

1. Until Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument shall read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument.

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Initials: 

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KONDAUR/McKinney-00178

However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

2. When Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument described in Section B1 above shall then cease to be in effect, and the provisions of Uniform Covenant 18 of the Security Instrument shall be amended to read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

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McKinney, J

VMP-843R (0405)

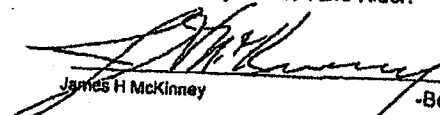
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Initials: 

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KONDAUR/McKinney-00179

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Fixed/Adjustable Rate Rider.


James H McKinney (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

VMP-843R (0405)

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McKinney, J
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KONDAUR/McKinney-00180

Exhibit 5

Faxed 12/24/09 to: Kondaur Capital Corporation 1 (877) 566-3287

JAMES MCKINNEY
618 S. Wickiup Road
Apache Junction, AZ 85219
December 24, 2009

Kondaur Capital Corporation
Kondaur Venture X, LLC, by:
Kondaur Capital Trust Series 2009-3, et. al.
all hereinafter "Kondaur"
Paula Chastain
Jon Daurio
Peter Bai
Mike Petry
1100 Town & Country, Suite 1600
Orange, CA 92868

Deutsche Bank
Noted in at least one of Kondaur's Delaware corporate filings.
1761 E. St., Andrew's Place
Santa Ana, CA 92705-4934

Re: Account #: 109147, also known / formerly-known-as M & I #35662154 dated
February 7, 2007

Notice to the Principal is Notice to the Agent and Notice to the Agent is Notice to the Principal.

Kondaur Capital Corporation, Kondaur, and Deutsche Bank and all listed above:

Again, as I reasonably noted in earlier letters, I have great doubts to whom I am dealing with. Since you have a foreclosure scheduled for January 5th, 2010, I demand to immediately negotiate with the Real Party in Interest to this transaction, not just an F.D.C.P.A. debt collector - servicer.

Peter Bai told us that Kondaur Servicing Corporation is just an "asset manager" and not a Servicer. Asset manager for whom?

This is my 7th QWR to this account, none of which have been answered, by the previous servicers, nor by Kondaur in purposeful repeated violations of both R.E.S.P.A. and the F.D.C.P.A.

I request in addition to my earlier questions, actual real answers to the following:

1. Is this account a part of, or has ever been a Mortgage Backed Security (M.B.S.)?

EXHIBIT A
KONDAUR/McKinney-00042

2. What is the name of this Security or Securities?
3. What is the contact name, address, and telephone number of the Security(ies)?
4. Is this account held by a Pool of Investor(s)?
5. What is the name of the Pool?
6. What is the contact name, address, and telephone number of the Pool?
7. Who is the claimed Real Party in Interest to this account?
8. What date did you transfer *consideration* for this Note to any previous Real Party in Interest?
9. Who is the claimed Holder in Due Course to this account?
10. What date did they transfer consideration for this title to any previous Holder in Due Course?
11. What records does Kondaur Capital Corporation and other Kondaur entities above, have about the default of the note?
12. How does Kondaur advertisement on the internet for loans which include "hyper-default", involve this account? See: <http://www.kondaur.com/home.aspx>
13. What records does Kondaur Capital Corporation and other Kondaur entities above, have about the former dishonor(s) of the note, when it was serviced by M&I and following?

Due to the emotional distress, and economic losses from you attempting to foreclose by home, send the answers to each of these pertinent questions immediately.

Silence can only be equated with fraud where there is a legal or moral duty to speak, or where an inquiry left unanswered would be intentionally misleading - U.S. v. Tweel, 550 F.2d 297, 299 (3rd Cir. 1977). Notification of legal responsibility is "the first essential of due process of law." Connally v. General Construction Co., 269 U.S. 385, 391.

Kondaur has been silent for six long, unnecessary months now, since August 18th, 2009.

I demand that each of you answer these questions, and postpone your foreclosure date for a reasonable amount of days *after* you finally answer these questions in their entirety, so I may respond accurately and completely to the court and jury in my forthcoming amended complaint.

Sincerely,


James McKinney

KONDAUR/McKinney-00043



1100 Town & Country Rd.
Suite 1600
Orange, CA 92868
888.KONDAUR phone
877.KONDAUR fax

January 4, 2010

VIA EMAIL TO jmckinney@hushmail.com / ORIGINAL VIA OVERNIGHT MAIL

Mr. James McKinney
618 S. Wickenburg Road
Apache Junction, AZ 85219

Re: Kondaur Loan No.: 109147
Secured Property: 608 S. Wickenburg Road, Apache Junction, AZ 85219

Dear Mr. McKinney:

This is the response of Kondaur Capital Corporation ("Kondaur") to your letter dated December 24, 2009, which the Legal Department received on December 26, 2009 regarding the matter referenced above, which you characterized therein as a "qualified written request" ("QWR") pursuant to the Real Estate Settlement Procedures Act, 12 U.S.C. 2605(e) ("RESPA"). A true and correct copy of your letter is attached hereto as **Exhibit A**.

As we understand your letter, you state that you have "great doubts to whom [you] are dealing with." And, because a foreclosure sale of the aforementioned property is scheduled for tomorrow, January 5, 2010, you demand to immediately negotiate with the "Real Party in Interest" to this transaction. You further claim that you have issued six previous QWR inquiries to both Kondaur and prior servicers, but have purportedly not received a response to any of the inquiries.

In addition to the above, you list a series of thirteen questions to which you demand an answer. Lastly, you state:

"Kondaur has been silent for six, long unnecessary months now, since August 18th, 2009.

In response to your first inquiry regarding your alleged doubts about with whom you are working, it appears that you are simply asking questions to which you already know the answer. As you are very well aware, you have been working with Kondaur, the current Note Holder, for the last six (or more) months in order to resolve the delinquency of your mortgage. Nevertheless, attached hereto as **Exhibit B**, is a copy of the recorded Assignment of Mortgage from M&I Bank to Kondaur. Presumably, this is the proof that you are seeking which clearly reflects Kondaur as the "Real Party in Interest." Despite this documentation, which is of public record, you claim that Kondaur has failed to respond to each of your inquiries. Attached hereto collectively as **Exhibit C** are copies of our response letters dated August 18, 2009, August 24, 2009 and September 21, 2009, which were sent in response to your inquiries dated August 17, 2009, and August 18, 2009 (which included your letters titled "Notice of Loan Rescission" and "Qualified Written Request, Complaint, Dispute of Debt and Validation of Debt

KONDAUR/McKinney-00039

Letter, TILA Request.") Accordingly, contrary to your assertion, Kondaur has properly responded your two inquiries (rather than six).

The fact that Kondaur promptly responded to each of your inquiries (in addition to our many conversations via email and telephone) contradicts your claim that Kondaur has been silent for the last six months. You and your son, Mr. Dow McKinney, are well aware that Kondaur has been in consistent contact with you regarding our mutual desire to bring this matter to a close. Not only has Kondaur postponed the foreclosure sale on three occasions (September 9, 2009, October 20, 2009 and December 1, 2009), but we have also consistently negotiated and significantly reduced the amount we would accept as payment in full for you to refinance the property (with the lender of your choice) or through a note sale. As you know, throughout our numerous conversations both in email and via telephone over the last few months, and in our last and most recent effort, Kondaur drafted and issued to you a draft settlement agreement and mutual release (taking many of your demands into consideration) detailing our willingness to accept the sum of \$238,750.00 as payment in full on your loan which carries an existing unpaid principal balance of \$407,272.56. We spoke with you on numerous occasions to address your objections and questions you had regarding the draft, which included your concern that the majority of the verbiage in the agreement was that of Kondaur and did not include any of "your wording." In response to this, we informed you that the agreement itself was based on quality and not quantity. Regrettably, we were unable to come to a formal resolution as you simply would not accept the wording in the settlement concerning the reporting and issuance of a 1099 (debt forgiveness). (Despite our many efforts to explain the debt forgiveness act and the fact that you would not be liable for the deficiency, you would not accept the documentation we provided to you from the IRS website simply because of your statement that you do not trust the government, President Obama or his administration.) In an effort to avoid receiving a 1099, you indicated that New Start Mortgage ("New Start") would be willing to process the transaction as a note sale. However, in speaking with Mark Anderson of New Start, he stated unequivocally that he would not be able to process this as a note sale because you were only approved for a reverse short payoff refinance transaction and their office does not purchase notes. Although Kondaur has worked with you time after time by postponing the foreclosure sale date on three occasions, reducing the short payoff amount by over \$168,000.00, and trying to keep you in your property, you simply would not accept our offers because of your unreasonable concerns regarding the 1099 issue. As such, Kondaur has been given no other option than to move forward with the foreclosure sale scheduled for January 5, 2010.

The series of questions that you listed in your letter (which could not be answered by one or more of the enclosed documents) have not been responded to and/or copies of requested documents have not been provided as those inquiries or requests for loan documents were not properly the subject of a QWR, or, as they are proprietary information, were not subject to disclosure in response to a QWR. Pursuant to 12 USC §2605(e), the information that may be obtained on a loan under a QWR is specifically limited to "information relating to the servicing of such loan... that includes a statement of the reasons for the belief of the borrower, to the extent applicable, that the account is in error or provides sufficient detail to the servicer regarding other information sought by the borrower" (emphasis added). Servicing, itself, is defined in 12 USC § 2605(i) as "receiving any scheduled periodic payments from a borrower pursuant to the terms of any loan..." Therefore, we respectfully decline to provide the responses or copies of requested documents which are not properly the subject of a QWR.

KONDAUR/McKinney-00040

Mr. James McKinney
January 4, 2010
Page 3

Notwithstanding the foregoing, and pursuant to the attached Assignment of Mortgage, Kondaur Capital Corporation is the current note holder. Our address and telephone number are listed in the upper right corner of the first page of this letter.

Thank you for the opportunity to respond.

Yours very truly,



Paula Chastain
Legal Analyst
KONDAUR CAPITAL CORPORATION

Enclosures

THIS COMMUNICATION IS FROM A DEBT COLLECTOR BUT DOES NOT IMPLY THAT KONDAUR CAPITAL CORPORATION IS ATTEMPTING TO COLLECT MONEY FROM ANYONE WHOSE DEBT HAS BEEN DISCHARGED PURSUANT TO (OR WHO IS UNDER THE PROTECTION OF) THE BANKRUPTCY LAWS OF THE UNITED STATES; IN SUCH INSTANCES, IT IS INTENDED SOLELY FOR INFORMATIONAL PURPOSES AND DOES NOT CONSTITUTE A DEMAND FOR PAYMENT.

KONDAUR/McKinney-00041

Peter Bai

From: jmcKinney@hushmail.com
Sent: Friday, January 01, 2010 10:29 PM
To: Peter Bai
Cc: Mike Perry
Subject: Multiple time delays by whom?

Peter:

You and Mike falsely blamed us for the delays and times of silence month ago, and actually they have mostly been Kondaur's all these months. Time and time, Kondaur intentionally goes to the non-judicial wire with silence to cause me mental anguish. No good faith by you or your company. I noticed that your relative Fred Bai is a controlling principle in the company. Nice deception of being a lowly employee in the company, Peter. Of course, Kondaur likes lies and half-truths. The whole company is built on them. That is why you and Jon actually seek out and buy loans with origination Fraud! Makes sense.

I know for a fact that Kondaur Capital Corporation is not a Holder in Due Course, as required in this state pursuant to A.R.S. 47-3302. Thereby, Kondaur is in grievous violation of Arizona law; but a big mega-corporation like 'Kondaur', actually Deutsch Bank/Goldman Sachs could care less.

The crappy little settlement was to conveniently get rid of the long lawsuit ahead. It was presented by Kondaur to me as an easy-to-understand dollar amount with the supposed real 'owner'.

Nothing was said about complex 6-page contracts, continued liabilities of mine, and switching jurisdiction from Arizona to California.

Monday, more court!

A friend of mine is writing a major News link article to Livinglies.wordpress.com, so some of the other 28,000 people you are violating in this country have direct references to your illegal activity in this country, as the UCC is relatively uniform nationwide. In this silence thereafter, the same basic letter will be going to my Arizona legislators.

You may pull off your illegal non-judicial foreclosure without 47-3302 Chain of Title with me - but I promise that overall it is not financially profitable for your den of thieves in the long haul. You may win the non-judicial this week, but I will win some healthy vigorous PR battles thereafter.

Since you have not reasonably nor timely responded this last ten long days while continuing threatening me the non-judicial loss of my cozy retirement home, my loving family has experimentally contacted two suffering local families about Kondaur's illegal activities in Arizona. These scared families thankfully are alerting their legal counsel with these important discoveries, as one of them lives in a million-dollar house.

If this is not over, completely signed, and finalized without your attorney gobbledygook bullshit by Saturday 1-2-2010; my family is calling an average of two suffering people daily in this depressed state to encourage contact and education with their attorneys forthwith. Arizona attorneys need to know about Kondaur! And that they will. Ask a local trash city after it screwed us out of \$300,000 18 years ago - Cost them a 60 million dollar football stadium in the long run! We are fun to play with.

Games over.

Exhibit 6

1 JAMES MCKINNEY
2 618 S. WICKIUP ROAD
3 APACHE JUNCTION, ARIZONA 85119
4 (602) 717-7502
5 PRO PER (SELF REPRESENTED LITIGANT)

6 **IN THE SUPERIOR COURT OF ARIZONA**
7 **MARICOPA COUNTY**

8 JAMES MCKINNEY, an individual,
9 Plaintiff,

10 vs.

11 **KONDAUR CAPITAL CORPORATION**, a
12 Delaware Corporation; **KONDAUR VENTURE**
13 **X, LLC**; an Delaware LLC; **KONDAUR**
14 **CAPITAL TRUST SERIES 2009-3**, a Delaware
15 Statutory Trust; **DEUTSCHE BANK TRUST**
16 **COMPANY DELAWARE**, a Delaware
17 Corporation; **PAULA CHASTAIN**, an individual;
18 **PETER BAI**, an individual; **FOLKS AND**
19 **O'CONNOR, PLLC**, an Arizona LLC;
20 **SECURITY TITLE AGENCY**, an Arizona
21 Corporation; **M & I MARSHALL AND**
22 **ILSLEY BANK**, a Wisconsin Corporation; **JOHN**
23 **JONES and JANE DOE JONES**, husband and
24 wife, **JOHN DOES and JANE DOES I-X**; **ABC**
25 **CORPORATIONS I-V**; and **XYZ**
26 **PARTNERSHIPS I-V**; **ABC LLCs I-V**, **XYZ**
TRUSTS I-V;

Defendants.

CASE NO.:

**PLAINTIFF'S APPLICATION FOR
TEMPORARY RESTRAINING ORDER,
PRELIMINARY and PERMANENT
INJUNCTION and ORDER TO SHOW
CAUSE.**

(Ex Parte Emergency Application)

Assigned to:

21 Plaintiff JAMES MCKINNEY, moves the Court, pursuant to Rule 65(d), Ariz.R.Civ.P., to
22 issue a Temporary Restraining Order, restraining and enjoining Defendants, their attorneys, officers,
23 agents, employees, and any and all other persons in active concert or participation with them, from the
24 acts and conduct as more fully defined below. Plaintiff further moves this Court to issue an Order to
25 Show Cause why a Preliminary and Permanent Injunction should not issue.
26

1 This Application is supported by the Points and Authorities included here and the pleadings
2 and motions filed in this case.

3
4 Above Defendant's "Kondaur" and "Folk and O'Connor's" illegal lack of standing
5 pursuant to A.R.S. 47 § 3302 and Rules of Civil Procedure 1 & 17(a) are the primary cause of
6 this emergency and permanent application, thwarting otherwise irreparable harm and injury to
7 Plaintiff from this lack of A.R.S. 47 § 3302 standing.

8 **JURISDICTION AND VENUE**

9
10 1. This Court has jurisdiction over the matters related to the emergency, injunctive,
11 provisional, and equitable relief sought herein, pursuant to the agreements of the parties
12 referenced below.

13 2. Venue is proper pursuant to Arizona Revised Statutes § 12-401, et seq.

14 3. The transaction was originated within Maricopa County, Arizona.

15 4. The parties herein are subject to certain contractual obligations that are the
16 subject of this litigation.

17
18 5. This action is brought, for among other purposes, to restrain and enjoin the
19 Defendants, their agents, employees, representatives, lawyers, directors and officers, from
20 taking any action to improperly transfer, dispose of, or use the property of Plaintiff to foreclose
21 and gain possession of Plaintiff's Property.

22 6. All exhibits are true and correct, attached hereto, and incorporated herein.

23 //

24 //

25

26

1
2
3 **BACKGROUND AND PARTIES**

4 7. Plaintiff James McKinney has a primary home at 618 S. Wickiup, Apache
5 Junction affected by Defendants actions in Maricopa County, Arizona, with a note once
6 originated and serviced by M& I Bank. On information and belief, M & I Bank had originated
7 this note in February 2007 for an unknown third party, and previously had serviced it as well
8 until circa August 2009.

9
10 8. Previously, from March to May 2009, upon continued administrative discovery
11 of regulatory violations, misrepresentations, and material breaches, Plaintiff disputed and
12 rescinded the Note. During that time-period, employees of M & I Bank had advised retired
13 Plaintiff to quit making payments "to qualify for a loan modification" they were proffering.
14 Plaintiff in good faith followed the advice of servicer M & I Bank, yet they denied any
15 reasonable, H.O.E.P.A. compliant modification and instituted a Notice of Trustee Sale instead.

16
17 9. Plaintiff later discovered that only approximately 4% of loans are actually ever
18 modified in the United States, so M & I's inducements to retired Plaintiff were absurd.

19
20 10. Also on information and belief, M & I bank was a servicer, wholly unable as a
21 non-Real Party in Interest to actually contract into loan negotiations and modifications with
22 Plaintiff, in the first place. On information and belief, this non-ability to contract problem as a
23 non-owner is nationwide with most 'securitized' loans in the United States by debt collector
24 servicers who are not Real Parties in Interest.
25
26

1
2 11. M & I Bank's inducements and advice to Plaintiff to default were unnecessary,
3 misleading, fraudulent, and damaging to Plaintiff. M & I bank repeatedly violated R.E.S.P.A.,
4 H.O.E.P.A., F.D.C.P.A., and F.C.R.A. during their servicing era.

5 12. In any case, M & I reportedly later 'sold' this *defaulted* dishonored note to some
6 foreign corporate entity with the name Kondaur in its title, as noted below.

7 13. As noted earlier, Defendants Kondaur Capital Corporation; Kondaur Venture X,
8 LLC; Kondaur Capital Trust Series 2009-3 (hereinafter also "Kondaur"), and Defendants Folks
9 and O'Connor (hereinafter also "Folks") are the primary subjects of this T.R.O., and Plaintiff's
10 request for permanent injunction during the adjudication of this case.

11 14. Like previous servicer M & I Bank, Defendant servicer Kondaur has repeatedly
12 refused to follow R.E.S.P.A. federal disclosure law within 12 U.S.C. Section 2605(e), in
13 disclosing the relationship of and between the various Kondaur foreign entities, LLCs,
14 Corporations, and offshore Trusts registered in the state of Delaware to Plaintiff, even though
15 Kondaur themselves claim the legal responsibility to do so right in their own introductory letter
16 (Exhibit A, July 31st letter paragraph 10)
17

18 15. There are 44 foreign to Arizona, corporate entities incorporating the name
19 "Kondaur" related to these Defendants registered in the state of Delaware. (Exhibit B)
20

21 16. 43 of these 44 foreign entities are not registered to do business in Arizona, yet 3
22 of them claim a relationship with Plaintiff, and more importantly to his recorded property
23 rights. (Exhibit A).
24
25
26

1 17. Three of the 44 Kondaur entities: Kondaur Capital Corporation; Kondaur
2 Venture X, LLC; and Kondaur Capital Trust Series 2009-3 appear in two notice papers sent to
3 Plaintiff dated August 4th, 2009 and July 31st, 2009. (Exhibit A).
4

5 18. Only one of the three Kondaur entities, "Kondaur Capital Corporation" is
6 properly registered to do business in the state of Arizona.

7 19. Kondaur Capital Corporation; Kondaur Venture X, LLC; Kondaur Capital Trust
8 Series 2009-3 have purposely, maliciously, and recklessly kept Plaintiff in the dark for 160
9 long unnecessary days, as to which Kondaur corporate entity if any, actually claims and proves
10 ownership of the Note and Deed of Trust. Their own July 31st, 2009 specifically states they
11 had 60 business days to answer. (Exhibit A, July 31st letter, paragraph 10).
12

13 20. Later in December 2009, Kondaur Capital Corporation employee Peter Bai told
14 Plaintiff McKinney, that Kondaur Capital Corporation was indeed *not* a servicer of the loan,
15 but quote an "asset manager".
16

17 21. This inducement to Plaintiff was a wire fraud upon Plaintiff by Kondaur Capital
18 Corporation.
19

20 22. The July 31st, 2009 letter sent to Plaintiff earlier by Kondaur Capital
21 Corporation, clearly states that Kondaur Capital Corporation is a R.E.S.P.A. 'servicer' of the
22 loan, also known in law as a F.D.C.P.A. §1692 debt collector, clearly contradicting the
23 December wire-fraud statement (Exhibit A, July 31st letter).
24

25 23. Neither a debt collector nor a servicer is an owner of a note.

26 24. Therefore Kondaur Capital Corporation as non-owner servicer is a commission-
based agent-contractee, with an unclarified or unknown third party.

1
2 25. In Kondaur's August 4th 2009 letter, Defendant Kondaur Capital Corporation
3 claims to have received a 'sold' or 'transferred' previously overdue, defaulted, dishonored
4 mortgage note from M & I Bank with the defaulted face amount of \$408,500. (Exhibit A,
5 August 4th, Letter).

6 26. Defendants "Kondaur Capital Corporation", some unclear non-registered
7 Kondaur entity, and Power of Attorney "Folks" are attempting to illegally foreclose the
8 Plaintiff's property, regardless to their absolute lack of standing to do so, as described below.
9

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **A. Defendants' Gross Wrongful Conduct**

12 27. Neither defendants Kondaur, nor Defendant Folks and O'Connor are a Holder in
13 Due Course to the Note and Deed of Trust, pursuant to A.R.S. 47 § 3302.

14 28. Defendant Kondaur shamelessly advertises to regulation-violating banks like
15 servicer M & I Bank, that Kondaur purposely and seeks out and 'buys' loans with 'hyper-
16 default', 'regulatory violations' and unbelievably, 'origination fraud'. (Exhibit C).
17

18 29. Kondaur's website homepage at www.kondaur.com/home.aspx is prima facie
19 evidence that Kondaur had full 'knowledge' that they were buying loans with default,
20 dishonor, and/or defect and or fraud, in contrast to the opposite basic foundational elements
21 required by A.R.S. 47 § 3302. (Exhibit C).

22 30. Defendant Kondaur attempted to cover up their purchases of loans with
23 regulatory violations and origination fraud, by politely re-labeling them 'scratch & dent'
24 mortgages, in their advertised inducements for non-Holder in Due Course loans. Kondaur
25 Capital Corporation's CEO Joe Daurio stated in April of 2009:
26

1
2 *"....a loan is scratch-and-dent for any of the following three reasons: loan*
3 *performance - the loan is either in default or was previously in default; a loan*
4 *where a regulation was violated in the origination process; or for underwriting*
5 *reasons that involved fraud." (Exhibit D- "Scratch-and-dent Loan Market*
6 *Offers Outlet").*

7 31. Kondaur's April 2009 'Scratch-and-dent' 'Kondaur News' is prima facie that
8 Kondaur had full 'knowledge' that they were buying loans with default, dishonor, and/or defect
9 and or fraud in violation of A.R.S. 47 § 3302, including Plaintiff's.

10 32. On information and belief, Kondaur has purchased 28,000 mortgage notes
11 throughout the country with regulatory violations and origination fraud, including Arizona,
12 including this Note, and involving the direct subject property of this application.

13 33. Defendant corporation(s) Kondaur Capital Corporation knew that buying loans
14 with regulatory violations and origination fraud negates the Note per A.R.S. 47 § 3302, for lack
15 of a valid Holder in Due Course.

16 34. Defendant Kondaur continued this risky illegal behavior in Arizona due to the
17 large extraordinary profits derived from it. (Exhibit D, Kondaur News page 1 "*....buying loans*
18 *at huge discounts....*").

19 35. On information and belief, Kondaur average purchase price of a Note with
20 regulatory violations is 23 cents on the \$1.00 of the defaulted 'face value' of the note.

21 36. This gross profit from buying illegally originated loans at this ratio, is 4 to 1
22 within just a few months time, necessary to complete a 90-day non-reviewed, non-judicial
23 foreclosure.

24 37. Defendant Kondaur assumed the risk of this illegal behavior in their business
25 model, as the few losses such as Plaintiff's contested note, are made up through the profits of
26

1 the estimated (95%) remainder of unchallenged loans that are foreclosed on, from least-
2 sophisticated, unrepresented, financially-strapped consumers.
3

4 38. Kondaur hoped that this Plaintiff consumer would collapse from exhaustion into
5 this undisputed category; and in August 2009 offered Plaintiff a \$5,000 cash bribe to drop
6 Plaintiff's claims of regulatory violations and origination fraud, telling Plaintiff to abandon his
7 claims and "get on with your life".
8

9 39. Kondaur's enterprise scheme is to abuse the Arizona non-judicial non-reviewed
10 foreclosure process to further 'clearing title' for previous violators' mistakes. This works to
11 unlawfully yet efficiently and cheaply 'quiet title' in 95+% of the regulatory-deficient, non-
12 Holder in Due Course notes that Kondaur 'assumes'.
13

14 40. A.R.S. 47 § 3302 clearly defines the necessary Holder in Due Course as follows:
15

16 "....A. "holder in due course" means the holder of an instrument if:....2. The
17 holder took the instrument: (a) For value; (b) In good faith; (c) Without
18 notice that the instrument is overdue or has been dishonored or that there is an
19 unsecured default with respect to payment of another instrument issued as part of
20 the same series;"
21

22 41. Blacks Law Dictionary also defines a Holder in Due Course as follows:
23

24 A holder in due course is a person who takes a negotiable instrument, such as a
25 promissory note, for value without knowledge of any apparent defect in the
26 instrument nor any notice of dishonor. (Black's Law Dictionary 2nd Pocket ed.
2001 pg. 322).

27 42. As Kondaur knowingly advertised for, sought out, and 'bought' Plaintiff's note
28 with notice of it being "overdue" as noted above in A.R.S. 47 § 3302 (A) 2, Kondaur utterly
29 lacks standing as a Holder in Due Course. (Exhibits C & D).
30

1
2 43. Also as Kondaur knowingly advertised for, sought out, and 'bought' the note
3 with notice of it being previously *Dishonored* by Obligor/Plaintiff as noted in A.R.S. 47 §
4 3302, Kondaur lacks standing as a Holder in Due Course.

5 44. Also as Kondaur knowingly advertised for, sought out, and 'bought' the note
6 with notice of known *Defect* from M & I Bank as noted in A.R.S. 47 § 3302, Kondaur lacks
7 standing as a Holder in Due Course.

8 45. Also as Kondaur knowingly advertised for, sought out, and 'bought' the note
9 without the "*In Good Faith*" required by A.R.S. 47 § 3302, Kondaur lacks standing as a
10 Holder in Due Course.
11

12 46. A non-Holder in Due Course is NOT a Real Party in Interest in the overall
13 transaction.

14 47. Only a Holder in Due Course can be a Real Party of Interest in any real estate
15 Chain of Title as well.

16 48. Only a Real Party of Interest can plead and defend in this Court per 16 A.R.S.
17 Rules of Civil Procedure, Rule 17(a).
18

19 49. Kondaur is not a Holder in Due Course; and thereby is not a Real Party in
20 Interest.

21 50. Kondaur as a non-Holder in Due Course therefore is unable to create an
22 unbroken chain of title necessary to foreclose upon the non-Holder in Due Course note.

23 51. Kondaur as a non-Real Party in Interest lacks standing in this Court and lacks
24 standing against this Plaintiff per Rule 17(a).
25

26 52. Kondaur utterly lacks the good faith demanded by A.R.S. 47 § 3302

ATTACHMENT C

DECLARATION OF LARRY O. FOLKS

Larry O. Folks states as follows:

1. I am over the age of majority, am an attorney licensed to practice law in the state of Arizona, am a partner in the law firm Folks & O'Connor, PLLC (the "Folks Firm") and in such capacity I have personal knowledge of the matters set forth herein.
2. On or prior to June 3, 2009, I was appointed as the successor "Trustee" for deed of trust dated February 7, 2007 and recorded on February 9, 2007 in Instrument Number 2007-017572 in Pinal County Arizona (the "McKinney Trust Deed") encumbering certain real property and improvements located in Pinal County Arizona (the "Subject Property").
3. By the terms of the McKinney Trust Deed, I commenced a "Trustee's Sale" on June 3, 2009 by appropriate recording and mailing of a "Notice of Trustee's Sale".
[Exhibit 1]
4. After commencing the Trustee's Sale, the Folks Firm was served with McKinney's complaint in *McKinney v. Kondaur Capital Corporation, et al.*, Pinal County Docket CV2009-03764 (the "Pinal Lawsuit"). Thereafter the Folks Firm filed a Motion to Dismiss in the Pinal Lawsuit ("Folks Dismissal Motion"). [Exhibit 2]
5. At the request of the beneficiary of the McKinney Trust Deed, the Trustee's Sale was postponed four times (the "Postponements"). Each of the Postponements was done in accordance with the applicable Arizona statutes. The last Postponement was from December 15, 2009 to January 5, 2009 at 9:05 AM.

6. On January 4, 2010 the Folks Firm received by facsimile a copy of McKinney's Application for Temporary Restraining Order, which bore no docket number, no judge assignment information nor any indication of the date, time, or place when the unnamed judge would consider McKinney's request (the "Blank Application"). [Exhibit 3]

7. The Trustee's Sale was completed as scheduled on January 5, 2010.

8. On January 6, 2010, before Trustee's Deed could be recorded, the Folks Firm was served with a copy of a temporary restraining order (the "TRO") that had been issued in *McKinney v. Kondaur Capital Corporation, et al.*, Maricopa County Docket CV2010-090122 (the "Maricopa Lawsuit"). [Exhibit 4]

9. The TRO was the first notice that the Folks Firm received of the docket number or judge assignment in the Maricopa Lawsuit.

I declare under penalty of perjury that the foregoing is true and accurate.

Executed on 1/14/10.



Signature

EXHIBIT 7

1 **GREENBERG TRAURIG, LLP**
2 **ATTORNEYS AT LAW**
3 **SUITE 700**
4 **2375 EAST CAMELBACK ROAD**
5 **PHOENIX, ARIZONA 85016**
6 **(602) 445-8000**

7 Laura Sixkiller, SBN 022014; sixkillerl@gtlaw.com
8 Attorney for Defendant M&I Marshall & Ilsley Bank

9 **IN THE SUPERIOR COURT OF ARIZONA**
10 **PINAL COUNTY**

11 **JAMES McKINNEY, an individual,**
12 **JAMES McKINNEY, an individual, Real**
13 **Parties in Interest**

14 **Plaintiffs,**

15 **v.**

16 **KONDAUR CAPITAL CORPORATION,**
17 **et al.,**

18 **Defendants.**

Case No. CV2010-090122

**M&I MARSHALL & ILSLEY BANK'S
JOINDER IN DEFENDANT FOLKS &
O'CONNOR, PLLC'S MOTION TO
DISMISS AND THE KONDAUR
DEFENDANTS' CONSOLIDATED
CROSS-MOTION FOR SUMMARY
JUDGMENT**

(Oral Argument Requested)

(Assigned to the Honorable Karen Potts)

19 Defendant M&I Marshall & Ilsley Bank ("M&I") hereby joins the Motion to
20 Dismiss filed by co-defendants Folks & O'Connor PLLC ("Folks & O'Connor") on
21 February 9, 2010. In addition, M&I hereby joins the Consolidated Cross-Motion for
22 Summary Judgment filed by Kondaur Capital Corporation, Kondaur Venture X, LLC, and
23 Kondaur Capital Trust Series 2009-3 (collectively, the "Kondaur Defendants") on
24 February 22, 2010.

1 For the sake of brevity, M&I incorporates by reference the Folks & O'Connor
2 Motion to Dismiss and Kondaur Defendants' Consolidated Cross-Motion for Summary
3 Judgment as if fully set forth herein. M&I respectfully requests that the Court deny
4 Plaintiffs' Motion for Summary Judgment, grant summary judgment in favor of M&I, and
5 dismiss Plaintiffs' Complaint for failure to state a claim upon which the Court can grant
6 relief.

7 For the Court's convenience, a proposed form of order is submitted concurrently
8 herewith.

9
10 RESPECTFULLY SUBMITTED this 23rd day of February, 2010.

11 GREENBERG TRAURIG, LLP

12 By: /s/ Laura Sixkiller

13 Laura Sixkiller

14 *Attorneys for Defendant M&I Marshall & Ilsley*
15 *Bank*

16 ORIGINAL of the foregoing
17 electronically filed this 23rd day of February, 2010
18 with the Clerk of the Court.

19 COPY of the foregoing faxed
20 and mailed
21 this 23rd day of February, 2010 to:

22 The Honorable Karen Potts
23 Maricopa County Superior Court
24 Southeast Court
25 222 East Javelina Avenue
26 Mesa, Arizona 85210-6234
602-372-8672

27 COPY of the foregoing emailed and mailed
28 this 23rd day of February, 2010 to:

- 1
2 James McKinney
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/s/ Lori Hinkel

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9 Attorney for Defendant M&I Marshall & Ilsley Bank

10 **IN THE SUPERIOR COURT OF ARIZONA**
11 **MARICOPA COUNTY**

12 JAMES McKINNEY, an individual,
13 JAMES McKINNEY, an individual, Real
14 Parties in Interest

15 Plaintiffs,

16 v.

17 KONDAUR CAPITAL CORPORATION,
18 a Delaware corporation; KONDAUR
19 VENTURE X, LLC, a Delaware LLC;
20 KONDAUR CAPITAL TRUST SERIES
21 2009-3, a Delaware statutory trust;
22 DEUTSCHE BANK TRUST COMPANY
23 DELAWARE, a Delaware corporation;
24 PAULA CHASTAIN, an individual;
25 PETER BAI, an individual; FOLKS AND
26 O'CONNOR, PLLC, an Arizona LLC;
27 SECURITY TITLE AGENCY, an Arizona
28 corporation; M&I MARSHALL AND
29 ILSLEY BANK, a Wisconsin corporation;
30 JENNIFER MENGES; an individual;
31 JOHN DOES and JANE DOES, husband
32 and wife; JOHN DOES and JANE DOES I-
33 X; ABC CORPORATIONS I-V; XYZ
34 PARTNERSHIPS I-V; ABC LLCs I-V; and
35 XYZ TRUSTS I-V,

36 Defendants.

Case No. CV2010-090122

**[PROPOSED] ORDER DENYING
PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT AND GRANTING THE
KONDAUR DEFENDANTS' CROSS-
MOTION FOR SUMMARY JUDGMENT
AND FOLKS & O'CONNOR, PLLC'S
MOTION TO DISMISS AND M&I
MARSHALL & ILSLEY BANK'S
JOINDER THEREIN**

(Assigned to the Honorable Karen Potts)

Having considered Folks & O'Connor PLLC's Motion to Dismiss, the Kondaur Defendants' Consolidated Cross-Motion for Summary Judgment and M&I Marshall & Ilsley Bank's joinder therein, and good cause appearing,

IT IS HEREBY ORDERED that Plaintiffs' Motion for Summary Judgment is denied.

IT IS HEREBY FURTHER ORDERED that the Kondaur Defendants' Cross-Motion for Summary Judgment and Joinder therein are granted.

IT IS HEREBY FURTHER ORDERED that Folks & O'Connor PLLC's Motion to Dismiss and Joinder therein are granted.

DATED this _____ day of _____, 2010.

HONORABLE KAREN POTTS
Maricopa County Superior Court

EXHIBIT 8

RECEIVED

APR 12 2010

LES

FILED FINAL COUNTY
SUPERIOR COURT
KRISTI YOUTSEY RUIZ CLERK

APR 07 2010

JAMES MCKINNEY
618 S. WICKIUP ROAD
APACHE JUNCTION, ARIZONA 85119
(602) 717-7502
PROPRIA PERSONA

IN THE SUPERIOR COURT OF ARIZONA
PINAL COUNTY

JAMES MCKINNEY, an individual,
JAMES MCKINNEY, an individual,
Real Parties in Interest

Plaintiffs,

vs.

KONDAUR CAPITAL CORPORATION, a
Delaware Corporation; KONDAUR VENTURE
X, LLC; an Delaware LLC; KONDAUR
CAPITAL TRUST SERIES 2009-3, a Delaware
Statutory Trust; DEUTSCHE BANK TRUST
COMPANY DELAWARE, a Delaware
Corporation; PAULA CHASTAIN, an
individual; PETER BAI, an individual; FOLKS
AND O'CONNOR, PLLC, an Arizona LLC;
M & I MARSHALL AND ILSLEY BANK, a
Wisconsin Corporation; JENNIFER MENGES;
an individual; JOHN JONES and JANE DOE
JONES, husband and wife, JOHN DOES and
JANE DOES I-X; ABC CORPORATIONS I-V;
and XYZ PARTNERSHIPS I-V; ABC LLCs I-V,
XYZ TRUSTS I-V;

Defendants.

CASE NO.: CV2010-00970

**PLAINTIFFS' RESPONSE TO
DEFENDANTS KONDAURS' MOTION FOR
SUMMARY JUDGMENT, ALL JOINDERS,
and PLAINTIFF'S REQUEST FOR FEES
AND SANCTIONS**

**REQUEST FOR TIME FOR DISCOVERY
PURSUANT TO
ARCP 56(f)**

**REQUEST FOR LEAVE, TO THEN
FURTHER AMEND THE COMPLAINT**

(Oral Argument Requested)

Plaintiffs are the victim of a Predatory loan, with Ponzi fraud and securitization fraud.
Plaintiffs have a priority Motion to Determine Standing before this Court. Oral Argument is
requested for it, and this matter. Without waiving that Motion, Plaintiffs assert that they have
stated facts and submitted evidence supporting all of his claims. Plaintiffs further deny and

1 further object to *each of* Defendants' misleading statements and non-Best Evidence exhibits *ab*
2 *ininto*. Rather, Best Evidence exhibits and cross-examinable, verifying testimony under oath
3 is demanded of Defendants.

4
5 Plaintiffs' Counsel should pay sanctions for his continued lies such as "*There is no*
6 *debate...*", etc. as prima fascia fraud. Servicer Kondaur Capital Corporation as a non-Creditor
7 is no Holder of any kind, and Counsel well knows that, and Plaintiffs have well plead with
8 ridiculous amounts of reams of paper that Kondaur is not a Holder of any kind. There is a real
9 debate here, which they want to run from. Discover and trial is in order.

10
11 Plaintiffs urge this Court to deny Defendants Kondaur Motion for Summary Judgment
12 and order it to answer, because the Complaint is properly pled. Should the Court determine
13 the Complaint lacks specificity, that the Court describe and offer instructions for improvement,
14 per *Platsky v. C.I.A.* et al. The McKinneys reasonably request an opportunity conduct
15 discovery pursuant to Rule 56(f) ARCP and to further amend their complaint, rather than
16 dismissal. Pro Pers are not held to the same exacting standards as Gust Rosenfeld. As hard as
17 these Plaintiffs work for quality, Pro Per pleadings are to be considered without regard to
18 technicality, as below:
19
20

21 *Haines v. Kerner*, 404 U.S. 519; In re Haines: pro se litigants are held to less
22 stringent pleading standards than admitted or licensed bar attorneys.
23 Regardless of the deficiencies in their pleadings, pro se litigants are entitled
24 to the opportunity to submit evidence in support of their claims.

25 *Platsky v. C.I.A.*, 953 F.2d. 25; In re Platsky: court errs if court dismisses the
26 pro se litigant without instruction of how pleadings are deficient and how to
repair pleadings.

1
2 *Anastasoff v. United States*, 223 F.3d 898 (8th Cir. 2000); In re Anastasoff:
3 litigants' constitutional (guaranteed) rights are violated when courts depart
4 from precedent where parties are similarly situated.

5 All issues brought up in Plaintiff's original motion and complaints are incorporated
6 herein for brevity to all issues, and to the lack of Defendant's standing. All issues included
7 herein are added to the Plaintiffs' previous causes of action against Defendants.

8
9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 **I. SUMMARY OF THE ARGUMENT**

11
12 **Plaintiffs' claims stem from deception at the inception and entire duration of**
13 **a predatory loan on their retirement home culminating in an illegal non-**
14 **judicial foreclosure based upon fraudulent documents fueled by arrogance**
15 **and greed. Plaintiffs sue to get to the truth regarding the foreclosure and sale**
16 **of their dream home they designed and built. Under the non-judicial statutes,**
17 **the recordings and assignments are defective both substantively (entities are**
18 **and signators are not who they say they are) and procedurally violating due**
19 **process, disclosure laws and the laws of equity.**

20 **If Defendant's arguments are accepted, *at the pleading stage*, then any person**
21 **could foreclose on any other person, simply by claiming to be the Power of**
22 **Attorney to a deed of trust appointing himself as trustee to foreclose,**
23 **validating the debt as one with personal knowledge of the accounting of the**
24 **loan (for Kondaur Capital) and then arranging a buyer to dispossess the true**
25 **owner without any recourse. It is contrary to Arizona law and public policy**
26 **to green-light fraudulent activity and illegal foreclosures.**

27
28 **Kondaur, M & I Bank, and Folks & O'Connor claim protection under the**
29 **statute, but the Arizona legislature did not intend to grant an absolute right**
30 **to lie, cheat and steal. Kondaur and Folks & O'Connor et al. knew of the**
31 **unrecorded transfers and the title issues prior to the sale, but claimed the**
32 **beneficiary "never changed." By failing to disclose their authority to act and**
33 **concealing the true parties and illegal nature of the transactions while**

1 refusing the reasonable requests for information, and facilitating the sale
2 Kondaur along with the other Defendants became a key player in the
3 unlawful seizure of the McKinneys' home. If they had the legal right to act
4 why not disclose it prior to the sale or even now, Kondaur's Motion for
5 Summary Judgment is nothing but an impermissible and premature Motion
6 to Dismiss, unsupported by facts or law. Kondaur's Motion for Summary
7 Judgment should be denied, and they should be ordered to answer.

8 II. MOTIONS TO DISMISS ARE NOT FAVORED

9 Dismissal is only proper under Rule 12(b)(6) of the ARCP where there is either a "lack
10 of a cognizable legal theory" or "the absence of sufficient facts alleged under a cognizable
11 legal theory."¹ That is NOT the Case at Bar. There are numerous well-pled FACTS and
12 causes alleged in the Complaint, as reasonably noted by Judge Potts, in her January 5th 2010
13 restraining order as follows:

14 *"The Court has considered Plaintiffs Verified Complaint and his*
15 *Application for Temporary Restraining Order, Preliminary and*
16 *Permanent Injunction and Order to Show Cause. The Court finds*
17 *that Plaintiff has set forth multiple alternative and credible causes*
18 *of action against said Defendants, specific facts that demonstrate*
19 *that immediate and irreparable loss will result to him before the*
20 *Defendants may be heard in opposition, and has further*
21 *demonstrated extraordinary difficulty in effectively identifying*
22 *and/or communicating with said Defendants..."*

23 Judge Potts' reasonable, thoughtful Findings are obvious to anyone that actually seeks
24 out Plaintiffs' complaint, attached exhibits, and the Qualified Written Requests; in contrast to
25 resultant supposed replies and non-answers of evasive, fraudulent Defendants. Yes - Plaintiffs
26 have *"set forth multiple alternative and credible causes of action against said Defendants"*.

¹ *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990).

1 It is too late to pretend otherwise; as desperate Defendants desperately wish were the case.

2
3 Defendants just want to continue their illegal business, with a \$320,000 unjust
4 enrichment profit on this case, without any interference from the Courts. In fact, EVERY
5 complaint in Arizona against these Defendants is automatically and disingenuously non-
6 answered with a 'Motion to Dismiss' / 'Summary Judgment' from these fraudulent
7 Corporations., no matter what the merits are and which other attorney files it. No real Good
8 Faith at all. Lies. Needless expenses against Plaintiffs, and gross regular and automatic abuse
9 of Arizona's Motion to Dismiss rules.
10

11 Sanctions against Defendants and against Counsel are therefore requested for this
12 abuse, and loss to Plaintiff.
13

14 15 **III. DISCOVERY OF DEFENDANTS' HIDDEN ACTIONS FOR COMPLAINT**

16 Defendants have gone out of their way to keep Plaintiffs from Discovery regarding the
17 true nature and (17a) Real Party in Interest of this Note. Nonetheless, Plaintiff has made
18 substantial *partial* discoveries as to the nature of the transaction. Therefore, this complaint has
19 several causes of action unknown to Plaintiff in his September 2009 complaint. This January
20 2010 complaint is well pled and researched. Nonetheless, Plaintiffs request leave to amend the
21 complaint if it needs fine-tuning; more than Judge Potts already well-noted
22 "multiple...credible causes of action". In fact, now even considerable more frauds, lies,
23 misrepresentations, unlawful activities, and causes of action have been discovered by Plaintiffs
24
25
26

1 that need to be amended to the January 2010 complaint anyway. Plaintiffs request leave.

2 Additional Discovery is demanded by Plaintiffs to flesh out the 'rest of the story'.
3 Defendants have had something to hide from Plaintiffs, refused actual responses to 7 different
4 statutory R.E.S.P.A administrative requests from Plaintiff for 365 long days, from March 16th,
5 2009 to present. Their pretended answers have been non-answers and boilerplate letters sent
6 to any inquires, **without substance to the questions actually asked.**

7
8 "Silence can only be equated with fraud where there is a legal or
9 moral duty to speak, or where an inquiry left unanswered would be
10 intentionally misleading" - *U.S. v. Tweel*, 550 F.2d 297, 299 (5th
11 *Cir.* 1977).

12 "Notification of legal responsibility is "the first essential of due
13 process of law." *Connally v. General Construction Co.*, 269 U.S.
14 385, at 391.

15 **Silence and non-answers to substantive questions, is each of these Defendants'**
16 **modi operandum, and is fraud on the Plaintiffs.**

17 **IV. RIGHT TO ENFORCE REGULATORY VIOLATION LOSSES:**

18 Plaintiff invested a \$175,000 previously owned free and clear lot into this transaction,
19 as well as \$60,000 in interest, and \$30,000 in additional upgrades to the property related into
20 this transaction - His retirement. Plaintiff wishes to be made whole again.

21 F.D.C.P.A, R.E.S.P.A., T.I.L.A., H.O.E.P.A., Breach, Section 22 of the Deed of Trust,
22 are all causes of action in state court in violation of Arizona's Unfair and Deceptive Acts and
23 Practices law and other Arizona laws and Rights. Kondaur is *not* a Holder in Due Course and
24 therefore cannot defend itself from these violations by both previous parties and itself.
25
26

1 Kondaaur actually advertised for the origination fraud - now they assumed it with their
2 purposeful behavior. The statute of limitations does not toll till the actions are discovered, and
3 for the Arizona Fraud there is no statute of limitations. The who what where why of Fraud
4 Claims is well established in Plaintiffs complaint and pleadings, including Defendants'
5 repeated fraud of misrepresentation to Plaintiffs, and fraud of silence per *U.S. v. Tweel*.
6

7 **V. WRONGFUL FORECLOSURE:**

8 To determine the validity of the trustee's exercise of the power of sale set forth in the
9 deed of trust, one must necessarily study the note and its ownership, and whether the note has
10 actually been defaulted upon to its actual Real Party in Interest.
11

12 Arizona recognizes the tort of wrongful foreclosure:
13

14 Furthermore, other jurisdictions have recognized this tort, and based on the
15 undisputed facts of this matter, the Court finds it appropriate to join those
16 jurisdictions and hold the Defendant liable for wrongfully foreclosing on the
Plaintiff's home.²

17 In *Herring*², the federal district court defined wrongful foreclosure as a tort that "exists
18 as a statutory duty . . . to exercise fairly and in good faith the power of sale in a deed to secure
19 [a] debt", and stated that "a breach of this duty is a tort compensable at law." *Id.* at *5.
20

21 Finally, and most importantly, none of the statutes can create or confer a right to foreclose a
22 deed of trust where the status of the beneficiary's entitlement to order the trustee to enforce the
23 power of sale is in question. Defendants have committed the tort of wrongful foreclosure
24 against Plaintiffs.
25

26 ² *Herring v. Countrywide Home Loans, Inc.*, 2007 WL 2051394 (D. Ariz. 2007) (emphasis supplied).

1
2 **VI. NOTICE PLEADING: RULE 8**

3 The McKinneys are not required to prove their entire case at the pleading stage.
4
5 Kondaurs' arguments show that it has sufficient notice of the claims against them. Kondaurs is
6 filing what amounts to be a premature Motion for Dismiss without having to provide any
7 disclosure or discovery to the McKinneys. Therefore, Plaintiffs request the Court order the
8 deposition of Kondaurs, its involved employees, M & I Bank, its involved employees, Larry
9 Folks, and Jennifer Menges, and production of documents relating to the transaction pursuant
10 to Rule 56(f) ARCP prior to ruling on this motion.
11

12 A complaint need only be a "plain and concise statement of the cause of action such
13 that the defendant is given fair notice of the allegations as a whole." Tarnoff v. Jones, 17 Ariz.
14 App. 240, 245, 497 P.2d 60, 65 (1972). Arizona has not adopted the more stringent pleading
15 standards of US Supreme Court cases Twombly and its progeny. See Cullen v. Auto-Owners
16 Ins. Co., 218 Ariz. 417, 418, ¶ 1, 189 P.3d 344, 345 (2008)(rejecting the application of
17 Twombly to Ariz. R. Civ. P. 8, stating that Arizona retains the lenient "notice" pleading
18 standard under Rule 8, absent constitutional amendment.)
19
20

21 When adjudicating a Rule 12(b)(6) Motion for Summary Judgment, Arizona courts
22 look only to the pleading itself and consider the well-pled factual allegations contained therein.
23 See, e.g., Dressler v. Morrison, 212 Ariz. 279, 281 ¶ 11, 130 P.3d 978, 980 (2006); Long v.
24 Ariz. Portland Cement Co., 89 Ariz. 366, 367-68, 362 P.2d 741, 742 (1961). Courts must also
25
26

1 assume the truth of the well-pled factual allegations and indulge all reasonable inferences.
2 Doe ex rel Doe v. State, 200 Ariz. 174, 175 ¶ 2, 24 P.3d 1269, 1270 (2001); Long, 89 Ariz. at
3 367, 362 P.2d at 742. Judge Potts correctly noted that it well already does.

4 5 **IV. SUMMARY OF FACTS**

6 The governing documents in this case---the alleged consideration trail for the Note,
7 the bifurcated Note from the Deed of Trust (Both predatory and unenforceable) --- Parties with
8 access, including Kondaur, refused to provide basic information in their sole purview and
9 control, rendering it impossible to determine who the necessary party (the true lender, creditor,
10 or holder in due course of the obligation) really was, or the amounts owed on the obligation.

11
12 Kondaur and other Defendants knew of the controversy that that they purposely
13 advertised for, and then put themselves in without Clean Hands. Therefore had a duty to
14 establish the chain of title and their authority to act on behalf of the holder in due course prior
15 to conducting the sale, but violated that duty and refused and failed to verify the true facts and
16 instead arranged for an yet unknown co-Defendant to 'bid' at the alleged sale.

17 18 **A. The Deed of Trust**

19
20 • **February 7th, 2007:** Deed of Trust's recorded servicing
21 rights transferred to M&I Marshall & Ilsley Bank lacking statutory
22 disclosures and containing material misrepresentations. The note
23 apparently was securitized, insured, and placed in stream of
24 commerce through a tax-free REMIC Trust or other investment
25 vehicle, but no assignments were ever recorded.

26 • **June 4th, 2009:** Plaintiff rescinded this contract within his
extended rescission rights for: misrepresentation by the originator,

1 and for violation of the Arizona U.D.A.P, and for fraud. A truth-in-
2 lending claim was also made by Plaintiff as well that Defendants
3 refused to acknowledge, and therefore is NOT a Plaintiffs' cause of
4 action in THIS complaint, as in the earlier complaint filed September
5 9th, 2009.

6 • **June 5, 2009:** Larry O. Folks of Folks and O'Connor signs,
7 and causes to be recorded a Substitution of Trustee as the present
8 beneficiary Power of Attorney of Defendant M & I, curiously
9 double-dipping, naming himself as "Trustee" pursuant to an alleged
10 and undisclosed Limited Power of Attorney. The document was
11 signed by Larry O. Folks two days AFTER it was allegedly
12 notarized "in the presence of" the other DOE Defendant - Jennifer
13 Menges. A fraudulent document.

14 • **June 5, 2009:** Co-conspirator Defendants executed and a
15 post-TRO Notice of Trustee Sale on the Plaintiffs' primary
16 residence.

17 • **August 4th - August 16th, 2009:** Kondaur Capital
18 Corporation, a SERVICER claims ownership of the Deed of Trust in
19 an assignment.

20 • **January 5th, 2010:** Although noticed *before the sale* by
21 Plaintiffs that a Restraining Order was in place from a complaint, as
22 the Maricopa Court judge acknowledged had "*several credible*
23 *causes of action*". Folks & O'Connor and other DOE defendants
24 rushed a Trustee's sale Deed to Quiet Title on their fraud and
25 regulatory violations, just as Defendant Kondaur had originally
26 advertised they do all along. Defendants lacked good faith in this
rush and coup.

B. The Promissory Note

1 • **February 7, 2007:** Note claimed by *Originator* M&I Marshall and
2 Ilsley Bank for an unknown Real Party in Interest.

3
4 • **Sometime Later:** allegedly transferred in blank, **without a date**,
5 without recordation, without valid endorsement on the allonge,
6 without the name of the 'company' endorsing.

7 • **June 2009:** Folks & O'Connor and other Defendants ignore the
8 actual questions and notices of James McKinney. **This silence is**
9 **reasonably equated with fraud.**

10 • **August 4th - 16th, 2009:** *Servicing* changes from M & I Marshall &
11 Ilsley to Kondaur Capital Corporation of California.

12
13 • **August 16th - January 15th, 2010:** Kondaur companies and other
14 Defendants refuse to send Plaintiff a true & correct copy of note
15 allonge requested in R.E.S.P.A. requests of Plaintiff.

16
17 • **January 4th, 2010.** Judge issues a valid good faith TRO for
18 "multiple, credible causes of action" against Defendants' actions.

19 • **January 5, 2010:** Alleged Trustee Sale conducted anyway by
20 Defendants and Trustee's Deed allegedly issued and unrecorded to
21 date.

22
23 • **January 15th, 2010:** Non Best-Evidence allonge in blank,
24 unrecorded, undated, with fraudulent endorsements by signators
25 claiming to be Vice President at M&I Marshall & Ilsley Bank, when in
26 fact the signatory was a vice president of a separate corporation listed
 as defunct since December 31st, 2007 by the Wisconsin Department of

1 Financial Institutions.

2
3 • **Present:** Defendants Kondaur, and Folks & O'Connor co-acting as,
4 Accountant, Agent, legal counsel, and Special Power of Attorney of
5 other Defendants, seek absolution and validation of the illegal
6 foreclosure sale of Plaintiffs home and primary residence, misusing
7 A.R.S. 33-807(E), a statute that covers a defendant that acts *solely* as a
8 Trustee, which Folks & O'Conner, definitely did not act solely as a
9 Trustee, but as accountant, power of attorney, agent, co-conspirator,
10 etc.

11 • **Present:** Defendants Kondaur, and Folks & O'Connor each acting
12 as, Accountant, Agent, legal counsel, and Special Power of Attorney of
13 other Defendants, have yet after 370+ days refused to give
14 administrative discovery to Plaintiffs, verifying the Real Party in
15 Interest and NOTE complete chain of title to this 'transaction'. None
16 of the Defendants is Creditor to Plaintiff. A non-Creditor is a non-
17 Holder.

18 **V. RULE 41 (a) PLAINTIFFS' TIMELY DISMISSAL.**

19 After Kondaur Capital Corporation, and other Kondaur entities **were in Default**, past
20 their 30-day response deadline and 30 days past the end of settlement negotiations between
21 them; Plaintiffs **VOLUNTARILY** dismissed their September complaint **WITHOUT**
22 **PREJUDICE** per Rule 41(a), *before* any other claimed dismissal of these parties.

23 Plaintiff to the best of their ability discovered additional causes of action, and filed a
24 newer more complete complaint to describe the predatory loan on McKinney's retirement
25 home; culminating in an illegal non-judicial foreclosure based upon fraudulent documents
26 fueled by arrogance and greed. This would have been unnecessary, had Defendant's acted in

1 good faith with the loan and disclosure of its requirement. No assumed res judicata can be
2 made ex post facto before Defendants Rule 41(a) dismissal, to cover the sins and illegal acts of
3 Defendants, particularly when new causes of action are present. 2nd Plaintiff James McKinney
4 (the relative) made no causes of action yet till January 2010, to preserve by quiet title his home
5 equity against Defendants' illegal actions, and has the full and necessary right to do so.
6

7 8 **VI. LEGAL ARGUMENT**

9 **A. The McKinneys Have Stated a Claim and Have Sufficiently Pled Their** 10 **Claims**

11 It is basic that a creditor seeking to enforce a security interest must prove the debt
12 pursuant to ARS §47-3301 (The UCC is based on ancient commercial law and has been
13 adopted in all fifty states), including the terms, the ownership, and the amounts due and that
14 the Trustee establish their authority to act on behalf of the holder in due course to enforce the
15 right. The non-judicial foreclosure process was not intended to be an end run for illegitimate
16 parties to obtain property based on smoke and vapor. This prejudices not only the homeowner,
17 but also the true holder of the note, as well as bone fide purchasers and the confidence of the
18 public at large.
19

20
21 Defendants Kondaur as agents owe a duty of due diligence, honesty, and fairness to
22 all the parties. Kondaur apparently reap great benefits and unknown profits by foreclosing on
23 thousands of Maricopa County homeowners acting as trustee, accountant, legal counsel, power
24 of attorney, and possibly partners or interested parties in the transactions and as such they are
25
26

1 an integral part of the scheme as alleged in the Complaint.

2 The genuine current note ---and any evidence of a valid transfer--- is the best evidence
3 of these elements,³ but there are other ways to prove entitlement to enforce the debt, as set
4 forth in ARS §47-3301 and ARS §47-3309. Despite being given numerous pre-litigation
5 opportunities, Defendants including Kondaur have ignored statutes and law requiring
6 disclosure. Defendants have recorded, or caused to be recorded by agents, a series of
7 documents that, at best, are riddled with errors and inaccuracies and at worst, smell of fraud.
8

9
10 Kondaur Capital Corporation and unknown are 'agent' of all the parties to the
11 transaction at all times prior to performance of the conditions of the transaction and bears an
12 agency relationship to each of them. *Lombardo v. Albo* 199 Ariz. 97, 14 P.3d 288 (2000) cites
13 *The Restatement (Second) of Agency* (1958) describes both the duties of the agent to the
14 principal, §§ 376-431, and the duties of the agent to third persons, §§ 320-362. So, for
15

16 ³ The most fundamental piece of evidence to support a claim is the promissory note or instrument
17 establishing the existence and terms of the debt. A note is necessary to establish the existence of a debt,
18 its key terms, and the creditor's standing to collect the debt.

19 **The note is necessary to trace the ownership of the obligation and to ensure that a creditor has**
20 **standing to bring an action to collect from a debtor. As an avalanche of securitized home loans**
21 **have entered default in the last year, courts have become frustrated at the difficulty in determining**
the chain of title of the note.

22 Katherine Porter, *Misbehavior and Mistake in Bankruptcy Mortgage Claims*, 87 TEX. L.REV. 121 (2008)
23 (citing *Nosek v. Ameriquet Mortgage Co. (In re Nosek)*, 386 B.R. 374, 383-85 (Bankr. D. Mass. 2008)
24 (imposing monetary sanctions on Ameriquet, Wells Fargo, and several attorneys for misrepresenting the
25 identity of the holder of the note in bankruptcy proceedings); *see also In re Foreclosure Cases*, 521 F.
26 Supp. 2d 650, 654 (S.D. Ohio 2007) (dismissing foreclosure cases for lack of standing when
ownership of the note was not established).

1 example, *Restatement (Second) of Agency* § 348 imposes liability on the agent to third persons
2 for representations made in a transaction on behalf of the principal. Comment c to section 348
3 acknowledges the duty of the agent to reveal the truth to the other party, and cross-references
4 *Restatement of Torts* § 551.
5

6 The obligation to each is measured by an application of the "ordinary principles of
7 agency." As an agent, the trustee may be liable for negligence. This principle was found
8 applicable in *Munger v. Moore*, 11 Cal. App.3d 1, 7,89 Cal. Rptr. 323 (1970), wherein the
9 court stated: "That rule is that a trustee or mortgagee may be liable to the trustor or mortgagor
10 for damages sustained where there has been an illegal, fraudulent or willfully oppressive sale
11 of property under a power of sale contained in a mortgage or deed of trust." (4) An agent has
12 the duty to use reasonable skill and diligence and if he violates this duty, he is liable for any
13 loss which his principal may sustain as the result of his negligence. *Dahl-Beck Electric Co. v.*
14 *Rogge*, 275 Cal. App.2d 893, 80 Cal. Rptr. 440 (1969).
15

16 In general, a trustee has a general duty to conduct the sale "fairly, openly, reasonably,
17 and with due diligence," exercising sound discretion to protect the rights of the mortgagor and
18 others. *Baron v. Colonial Mortgage Service C* 111 Cal. App.3d 316, 323o.,; *Bank of Seoul &*
19 *Trust Co. v. Marcione*, 198 Cal. App.3d 113, 118, 244 Cal. Rptr. 1 (1988); *Block v. Tobin*
20 (1975) 45 Cal. App.3d 214, 221, 119 Cal. Rptr. 288.
21

22 Never did Folks & O'Connor show who the current owner of the obligation was, or
23 how exactly it came to be reportedly in the hands of agent Kondaur Capital Corporation a self
24
25
26

1 proclaimed "premier purchaser of scratch and dent residential mortgage loans"
2 employing "unique management, servicing and liquidation strategies" for loans with
3 "origination fraud" and "regulatory violations" If the unique scheme can be covered and
4 validated by any self appointed Trustee without any discovery or disclosure, the wrongdoers
5 would achieve their objective in laundering the dirty/predatory notes with origination fraud
6 and regulatory violations and the victims, homeowners and society suffer.
7

8 *Krohn v. Sweatheart*, 203 Ariz. 205, 52 P.3d 774 states that while the rationale of
9 setting aside judicial foreclosure sales for gross inadequacy is well understood, it is not the
10 only basis for upsetting such sales. Judicial foreclosure sales have been set aside even in the
11 absence of gross inadequacy when there has been some irregularity. "[W]here there is an
12 inadequacy of price which in itself might not be grounds for setting aside the sale, slight
13 additional circumstances or matters of equity may so justify." *Mason v. Wilson*, 116 Ariz.
14 255, 257, 568 P.2d 1153, 1155 (App.1977) (citing *Johnson v. Jefferson Standard Life Ins.*, 5
15 Ariz.App. 587, 429 P.2d 474 (1967)). Kondaur buys "scratch and dent" mortgage loans for
16 pennies on the dollar prior to the Trustee sale and uses unique liquidation strategies and agents
17 claiming plausible deniability to game the system.
18
19
20

21 It is the general rule in other non-judicial foreclosure states that courts have power to
22 vacate a foreclosure sale where there has been fraud in the procurement of the foreclosure
23 decree or where the sale has been improperly, unfairly or unlawfully conducted, or is tainted
24 by fraud, or where there has been such a mistake that to allow it to stand would be inequitable
25
26

1 to purchaser and parties.” *Bank of America etc. Assn. v. Reidy*, 15 Cal.2d 243, 248, 101 P.2d
2 771-775 (1940). Legislatures did not intend to immunize beneficiaries from liability for
3 deceit, or to expand the risks borne by purchasers to include the assumption of damages
4 resulting from a beneficiary's fraud. See *Lassar & Gross International, Inc. v. Dunham*, 196
5 Cal. App.3d 496, 501-502 [241 Cal. Rptr. 854 (1987)].
6

7 In the absence of a fiduciary or confidential relationship, a duty to disclose arises at
8 common law if material facts are known only to the defendant and the defendant knows that
9 the plaintiff does not know or cannot reasonably discover the undisclosed facts, *Buist v. C.*
10 *Dudley DeVelbiss Corp.* 182 Cal. App.2d 325, 331, 332, 6 Cal. Rptr. 259 (1960). Undisclosed
11 facts are material if they have a significant and measurable effect on market value. *Reed v.*
12 *Kin*, 145 Cal. App.3d 261, 267 [193 Cal. Rptr. 130 (1983)]. A breach of the duty to disclose
13 gives rise to a cause of action for rescission or damages. *Rothstein v. Janss Investment Corp.*,
14 45 Cal. App.2d 64, 69 [113 P.2d 465 (1941)].
15
16

17 Defendants seek dismissal of the Plaintiffs' claims pursuant to 12(b)6 resulting from an
18 illegal non-judicial foreclosure sale with no disclosure or proof of the legal basis or authority
19 to do so. The June 2009-voided, 2007 Deed of Trust was recorded once, and it is known the
20 Note was transferred outside that transfer. The Arizona's recording statute for the transfer of
21 an interest in real property was not satisfied A.R.S. 33-411.01. There are obvious gaps in the
22 chain of title that Kondaur as agent breached their duty to Plaintiffs and failed to exercise due
23 diligence and refused to disclose material facts. Defendants Kondaur, Menges, and Folks &
24
25
26

1 O'Connor had actual notice of the issues and failed to exercise due diligence in ascertaining
2 the validity of the assignments prior to the sale and ignored direct warnings from Plaintiffs'
3 prior to finalizing the alleged transaction.
4

5 Defendants rely on ARS 33-811 which was drafted long before the securitization of
6 mortgage notes and unrecorded assignments became a common reality. The statute
7 presupposes the banks have a valid legal interest with the original deed of trust,
8 UNBIFURCATED note with allonge and valid recorded assignments prior to a non-judicial
9 foreclose and that the Trustee can rely in Good Faith on the representations, which is not the
10 case here. Defendants, including Kondaur knew or should have known the facts prior to the
11 sale and failed to exercise due diligence **and disclose the facts to Plaintiffs.**
12

13 The current use of non-judicial process is in violation of substantive and procedural due
14 process as guaranteed under the Arizona and United States Constitutions Defendants should be
15 estopped from claiming any statutory or 'rules' protection pending full disclosure and
16 discovery. To put the burden on the Plaintiffs/homeowners of proving the claim in the
17 pleading stage is fundamentally unfair, while all the information and documentation necessary
18 to establish the factual basis for it, is in the sole control of the wrongdoers that refuse to
19 disclose even the most basic information. Plaintiffs claim is made in good faith and well
20 founded based upon the known facts. His causes of actions against this motion included those
21 in his January complaint. These causes of action are added to his original causes against
22 Defendants as well.
23
24
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1 Defendants claim a valid trustee deed was issued, but the facts show otherwise and the
2 Trustee assignment is invalid. The transfer of the real interest of the claimed beneficiary M&I
3 bank appears to be fraudulent therefore no verifiable interest in the McKinney home could be
4 conveyed by the Trustee. It used to be that Banks were trusted and lawyers were honorable,
5 times appear to have changed, and money, greed, and power conquer all, and the rule of law is
6 ignored, manipulated, and abused.
7

8 VII. CONCLUSION 9

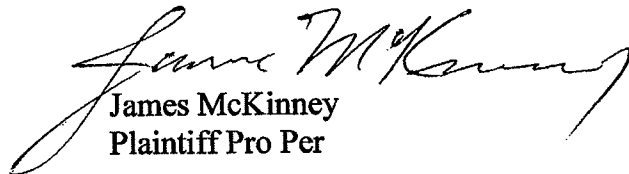
10 Based on the foregoing, the Plaintiffs McKinney respectfully request that this court
11 deny Defendants Kondaur's Motion for Summary Judgment, and for attorney's fees and
12 sanctions. As already found in this case, there is a good faith basis for Plaintiffs' claims, and
13 Plaintiffs request the Court order the deposition of Kondaur, its involved employees and
14 principles, M & I Bank and its involved employees, Larry O. Folks, and Jennifer C. Menges,
15 and for production of documents relating to the transaction pursuant to Rule 56(f) ARCP prior
16 to ruling on this motion.
17

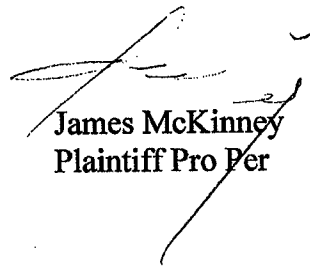
18 If the Court determines that the Complaint lacks sufficient specificity, Plaintiffs
19 McKinney submit an amended complaint, and requests the court give them leave to amend that
20 proposed amended complaint, if necessary.
21

22 If the Court determines that Defendants' Motion for Summary Judgment for
23 Attorney's Fees and Sanctions resulted in the waste of finite judicial resources, the McKinneys
24 request that the Court rule accordingly. According to an earlier ruling on this case, it does and
25
26

1 therefore should be sanctioned and dismissed.

2 Respectfully submitted this 7th day of April 2010.

3
4 
5 James McKinney
6 Plaintiff Pro Per

7
8 
9 James McKinney
10 Plaintiff Pro Per
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CERTIFICATE OF SERVICE

ORIGINAL filed with the Clerk of the Court,
hand-delivered this 7th day of April 2010, to:

Clerk of the Court
Pinal County Superior Court

A Copy of the foregoing was mailed
this 7 day of April 2010 to:

Mark L Collins
Robert M. Savage
Gust Rosenfeld, P.L.C
One Church Avenue, Suite 100
Tucson, Arizona 85701-1849

Laura Sixkiller
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Phone 602-262-2265
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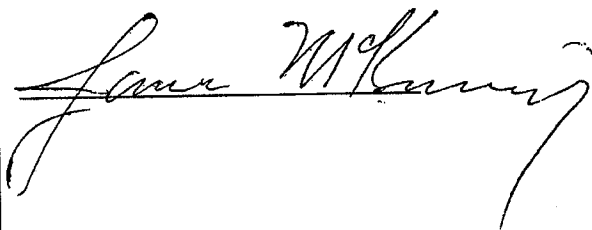


EXHIBIT 9

COPY

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3 Tucson, Arizona 85701-1627
4 Tel.: (520) 628-7070
5 Fax: (520) 624-3849
6 Mark L. Collins, SB #003929 (mcollins@gustlaw.com)
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8 *Attorneys for Defendants Kondaur Capital Corporation,*
9 *Kondaur Venture X, LLC, and Kondaur Capital Trust Series 2009-3,*
10 *Paula Chastain and Peter Bai*

11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

12 **IN AND FOR THE COUNTY OF PINAL**

13 JAMES McKINNEY, an individual,
14 JAMES McKINNEY, an individual,
15 Real Parties In Interest,

16 Plaintiffs,

17 vs.

No. CV2010-00970

**KONDAUR DEFENDANTS' REPLY IN
SUPPORT CROSS-MOTION FOR
SUMMARY JUDGMENT**

18 KONDAUR CAPITAL CORPORATION, a
19 Delaware corporation; KONDAUR VENTURE
20 X, LLC, a Delaware LLC; KONDAUR
21 CAPITAL TRUST SERIES 2009-3, a Delaware
22 statutory trust; DEUTSCHE BANK TRUST
23 COMPANY DELAWARE, a Delaware
24 corporation; PAULA CHASTAIN, an
25 individual; PETER BAI, an individual; FOLKS
26 AND O'CONNOR, PLLC, an Arizona LLC;
SECURITY TITLE AGENCY, an Arizona
corporation; M&I MARSHALL AND ILSLEY
BANK, a Wisconsin corporation; JOHN DOES
and JANE DOES, husband and wife; JOHN
DOES and JANE DOES I-X; ABC
CORPORATIONS I-V; XYZ
PARTNERSHIPS I-V; and ABC LLCs I-V;
XYZ TRUSTS I-V,

Defendants.

27 In the words of Shakespeare, Plaintiff James McKinney (the "Borrower") claims that he
28 has been forced to suffer the slings and arrows of accepting a loan of more than \$400,000 and,
29 concomitantly, being held to the outrageous fortune of repaying it. In an apparent tribute to

1 Socrates, both the Borrower and his son, Plaintiff James McKinney (the "Relative"),
2 acknowledge that the Borrower "owed somebody," but nevertheless argue that the Borrower's
3 failure to repay his debt should be rewarded with a house free and clear of liens.¹ Socrates's
4 cause was infinitely a more just cause and yet he failed to receive free housing.² The Borrower
5 is not Socrates and nothing in law or equity supports his desired result. Accordingly, the Cross-
6 Motion for Summary Judgment ("Cross-MSJ") filed by the Kondaur Defendants³ should be
7 granted.
8

9 BACKGROUND

10 Despite Plaintiffs' specious allegations of fraud, the underlying facts remain
11 straightforward. Defendant M&I Marshall and Ilsley Bank ("M&I Bank") loaned the Borrower
12 more than \$408,000 ("McKinney Loan"). [Separate Statement of Facts filed February 22, 2010
13 ("SOF") ¶1] The Borrower signed a Promissory Note ("McKinney Note") setting forth the
14 terms of the McKinney Loan. [SOF ¶2] The Borrower also executed a deed of trust
15 ("McKinney Trust Deed") on the Subject Property allowing the sale of that property in the
16 event the Borrower defaulted on the McKinney Loan. [SOF ¶3]
17

18 In February 2009, the Borrower defaulted on the McKinney Loan and has not made a
19 single payment since. [SOF ¶4] The natural result of the Borrower's default was a trustee's sale
20 of the Subject Property originally scheduled for September 9, 2009. [SOF ¶5]
21

22 ¹ See Plaintiffs' Consolidated Reply to All Defendants [sic] Replies to Plaintiffs [sic] Response to: Defendants'
23 Motion to Quash and Other Defendants' Pleadings to Date and Request to Hold Defendants' Motions in Abeyance
Until Adjudication of Defendants' 17(a) Standing filed on March 1, 2010 (hereafter "Universal Response") at ¶18.

24 ² As the Court may recall, upon his conviction for corrupting the youth of Athens, Socrates argued that he should
25 live in Athens at the public's expense as punishment.

26 ³ The Kondaur Defendants consist of Kondaur Capital Corporation, Kondaur Venture X, LLC, Kondaur Capital
Trust Series 2009-3, Paula Chastain, and Peter Bai.

1 Contrary to Plaintiffs' suggestion, "chain of title" to the McKinney Note and the
2 McKinney Trust Deed is readily apparent. There is exactly one "link" in that chain - M&I Bank
3 assigned its interest in both the McKinney Note and the McKinney Trust Deed to Defendant
4 Kondaur Capital Corp. ("Kondaur Capital"). [SOF ¶6] This was accomplished through the
5 recorded "McKinney Assignment" and the "McKinney Allonge." [SOF ¶6] There is no
6 evidence of any other assignments or securitization or bifurcation. In short, the chain of title for
7 the McKinney Loan is not elusive. Plaintiffs simply refuse to acknowledge it.
8

9 DISCUSSION

10 In their continuing attempts to rely on mere allegations, as opposed to actual evidence,
11 Plaintiffs invite the Court to treat the Cross-MSJ as a motion to dismiss in which the allegations
12 of Plaintiffs' Complaint are accepted as true. *See Dube v. Likins*, 216 Ariz. 406, ¶2, 167 P.3d
13 93, ¶2 (App. 2007) (in considering motion to dismiss, court accepts allegations in complaint as
14 true). The Kondaur Defendants did not, however, file a motion to dismiss. And because the
15 Cross-MSJ clearly reflects that there are no genuine issues of material fact, it is incumbent
16 upon Plaintiffs to "respond to the motion by showing there is *evidence* creating a genuine issue
17 of fact." *National Bank of Arizona v. Thruston*, 218 Ariz. 112, ¶21, 180 P.3d 977, ¶21 (App.
18 2008), *quoting Orme School v. Reeves*, 166 Ariz. 301, 310, 801 P.2d 1000, 1009 (1990)
19 (emphasis added). In other words, Plaintiffs "may not rest on [their] pleadings." *National Bank*
20 *of Arizona*, 281 Ariz. 112, ¶26, 180 P.3d 977, ¶26. They must present actual evidence to
21 support their claims. Bare allegations and innuendo will not suffice.
22

23 Nor may the Plaintiffs rely on the conclusory statements contained in their Answers to
24 Defendants' Separate Statement of Facts. Even assuming the Court treats that Answer as an
25 affidavit, it is well-settled that "affidavits that only set forth ultimate facts or conclusions of law
26

1 can neither support nor defeat a motion for summary judgment." *Florez v. Sargeant*, 185 Ariz.
2 521, 527, 917 P.2d 250, 256 (Ariz. 1996); *see also Lujan v. National Wildlife Fed'n*, 497 U.S.
3 871, 888, 110 S.Ct. 3177, 3188, 111 L.Ed.2d 695 (1990) ("The object of [Rule 56(e)] is not to
4 replace conclusory allegations of the complaint or answer with conclusory allegations of an
5 affidavit."). Indeed, under Rule 56(e), Ariz. R. Civ. P., a non-moving party's affidavit "must set
6 forth specific [and admissible] facts showing that there is a genuine issue for trial." The
7 Plaintiff's Answers fail to do so and, therefore, cannot defeat summary judgment. *See Jones v.*
8 *Merchants Nat'l Bank & Trust Co.*, 42 F.3d 1054, 1057 (7th Cir.1994), *cited with approval in*
9 *Florez*, 185 Ariz. at 527, 917 P.2d at 256 ("Self-serving assertions without factual support in
10 the record will not defeat a motion for summary judgment.").

12 **The McKinney Note and the McKinney Trust Deed are Enforceable by Kondaur Capital**

13 Kondaur Capital purchased the McKinney Note and the McKinney Trust Deed from
14 M&I Bank. The undersigned is in possession of the original McKinney Note and the original
15 McKinney Allonge. As a result, Kondaur is the "holder" of the McKinney Note and, thus, has
16 standing and the right to enforce it and the McKinney Trust Deed. A.R.S. §§ 33-401, 47-
17 1202(21)(a), 47-3301 and *Cruz v. Lusk Collection Agency*, 119 Ariz. 356, 359, 580 P.2d 1210,
18 1213 (App. 1978) (the assignee of a debt is the real party in interest for Rule 17(a) purposes).

19 It is not necessary for Kondaur to be "holder in due course" to enforce the McKinney
20 Note; being a "holder" is quite sufficient. The distinction between a holder and a holder in due
21 course is that "a person who is not a holder in due course takes an instrument subject to: all
22 defenses of any party which would be available in an action on a simple contract, as well as the
23 defense of want or failure of consideration; non-performance of any condition precedent."
24 *Amos Flight Operations, Inc. v. Thunderbird Bank*, 112 Ariz. 263, 266, 540 P.2d 1244, 1247
25 (1975). If the party enforcing the note is not a holder in due course, the payor can assert "the
26

1 same personal defenses which he could have asserted against the payees themselves." *Smith v.*
2 *Rabb*, 95 Ariz. 49, 52-53, 386 P.2d 649, 651 (1963). Here the Borrower has no valid personal
3 defense against the McKinney Note. Indeed, Plaintiffs have admitted as much by asserting that
4 the Borrower "owe[s] somebody." [See Universal Response at ¶18]

5 Having neither contradictory evidence nor authority, the Plaintiffs invite the Court to
6 free the Borrower from his obligations to Kondaur Capital for a variety of spurious reasons.
7 The Court should decline each of the Plaintiffs' invitations.

8 The Plaintiffs' droning incantation of the "best evidence rule" is inapt. The undersigned
9 possesses the original McKinney Note and Allonge and all copies used in Kondaur's pleadings
10 have been complete and accurate.⁴ See Ariz. R. Evid. 1003.

11 The shotgun assertions that the Allonge is unrecorded, undated and endorsed in blank
12 miss the mark. There is nothing in Arizona law requiring the recordation or dating of an
13 indorsement. See A.R.S. § 47-3204 (defining "indorsement"). Blank indorsements are
14 specifically contemplated by A.R.S. § 47-3205(B). Further, the McKinney Assignment was
15 recorded, dated, and specifically identified Kondaur Capital as the assignee.

16 Likewise, there is no merit to the Plaintiffs allegation that John Muroi's signature on
17 the Allonge was invalid. As the Secretary of M&I Bank's board of directors has certified:
18 "[E]ffective January 1, 2008, John A. Muroi was elected to the position of Vice President of
19 the Bank and is currently serving in such capacity, qualified and authorized to act on behalf of
20 the Bank, and the resolutions electing him as such are in full force and effect." [Exhibit B]

21 Asserting that the Borrower's default of the McKinney Note was also a "dishonor" does
22 not relieve the Borrower of his obligation to pay. Whether referred to as default or dishonor, the
23 Borrower's refusal to pay his admitted debt is simply not a defense to that debt. A.R.S. § 47-

24
25 ⁴ The McKinney Allonge had been endorsed in blank. A copy of the blank endorsed McKinney Allonge was attached to
26 the Kondaur Defendants' previous pleadings. After its receipt by Kondaur Capital, however, the McKinney Allonge was
stamped to identify Kondaur Capital as the holder. A copy of the stamped McKinney Allonge is attached as Exhibit A.

1 3502(A) (the dishonor of a note refers to a payor's failure to pay a note when due.)

2 The Plaintiffs assertion that Kondaur did not acquire the McKinney Note in "good faith"
3 is a red herring. The good faith required in Kondaur's acquisition of the McKinney Note and
4 Trust Deed refers to "honesty in fact in the conduct or transaction concerned." *Mecham v.*
5 *United Bank of Ariz.*, 107 Ariz. 437, 441, 489 P.2d 247, 251 (1971). Even assuming the
6 Plaintiffs had standing to assert such a claim, they have proffered no evidence of bad faith in
7 the Kondaur - M&I Bank transaction. This is not changed by the Plaintiffs' inadmissible
8 reliance on an advertisement by Kondaur that it buys so-called "scratch and dent" notes.

9 The price paid by Kondaur Capital for the McKinney Note is irrelevant. 6A C.J.S.
10 Assignments § 111. For example, in *Eli's Inc. v. Leman*, 591 N.W.2d 543, 557 (Neb. 1999), a
11 debtor argued that the amount paid for an assignment should reduce the underlying debt. The
12 Nebraska court rejected that argument noting that "an assignee may recover the full value of an
13 assigned claim regardless of the consideration paid for the assignment" and "we find nothing in
14 the record which would support Lemen's contention that the assignments of unliquidated claims
15 to Eli's or DCB at discounted values constituted 'inequitable conduct.'" *Id. See also Aetna*
16 *Casualty and Surety Co. v. McGullough*, 41 A.D.2d 161, 162, 341 N.Y.S.2d 424, 425 (S. Ct.
17 1973) ("Nor does it matter that the consideration paid was less than the total of the
18 indebtedness."); *K & M Electric Supply, Inc. v. Moduplex Corp.*, 686 So.2d 717, 718 (Fla App.
19 1997) (trial court erred by awarding assignee only amount paid for assignment because
20 assignee "was entitled to the full amount to which [assignor] would have been entitled").

21 **The Kondaur Defendants Did Not Breach Any Contract**

22 Originally, the Plaintiffs broadly alleged that "Plaintiff and Defendants entered into a
23 variety of agreements" and "Defendants breached all of the agreements." [Complaint at ¶¶ 158
24 and 159] In response to the Cross-MSJ, however, the Plaintiffs refer to only one alleged breach
25 of one paragraph of the McKinney Trust Deed. Upon scrutiny, that alleged breach is non-
26

1 existent.

2 As Plaintiffs correctly note, paragraph 22 of the McKinney Trust Deed states:

3 Lender shall give notice to Borrower prior to acceleration
4 following Borrower's breach of any covenant or agreement in this
5 Security Instrument (but not prior to acceleration under Section 18
6 unless Applicable Law provides otherwise). The notice shall
7 specify: (a) the default; (b) the action required to cure the default;
8 (c) a date, not less than 30 days from the date the notice is given to
9 Borrower, by which the default must be cured; and (d) that failure
10 to cure the default on or before the date specified in the notice may
 result in acceleration of the sums secured by this Security
 Instrument and sale of the Property. The notice shall further inform
 Borrower of the right to reinstate after acceleration and the right to
 bring a court action to assert the non-existence of a default or any
 other defense of Borrower to acceleration and sale.

11 Paragraph 15 of the McKinney Note specifies that any notice to Borrower "shall be deemed to
12 have been given to Borrower when mailed by first class mail or when actually delivered to
13 Borrower's notice address if sent by other means."

14 On April 2, 2009, by first class mail, M&I Bank sent the Borrower correspondence
15 stating, *inter alia*:

16 Our records indicate that you are in default on your promissory
17 note, dated 02/07/07, for nonpayment of amounts due as shown
18 below.

19 * * *

20 You may cure the defaults on or before May 02, 2009 by paying
 \$7,364.85.

21 Failure to cure the delinquency on or before the above date may
22 result in M&I Marshall and Ilsley Bank declaring the entire unpaid
23 amount due and payable without further demand, foreclosing by
24 judicial proceeding and selling the mortgaged property. You may
25 have the right to have the loan reinstated by taking actions, which
26 may be specified in the Note and Mortgage. In any foreclosure
 proceeding, you have the right to assert any defenses you may have
 to the acceleration and sale including the non-existence of any
 default.

1 A copy of this "Notice of Default" is attached as Exhibit C. Accordingly, notwithstanding the
2 Plaintiffs' dubious and self-serving statement that they did not receive the Notice of Default,
3 M&I Bank satisfied its contractual notice obligations.

4 **The Kondaur Defendants are Not Liable for Any Alleged Federal Statutory Violations**

5 In the scope of a single sentence, Plaintiffs argue that summary judgment should be
6 denied simply because four federal statutory schemes "are all causes of action." [Plaintiffs'
7 Response at 6] Whether or not those statutes create causes of action, the Plaintiffs make no
8 attempt to discuss their actual language, much less how they apply to the evidence in this case.
9 Instead, Plaintiffs attempt to use those statutes as a dilatory tactic merely by invoking them as
10 though they were read from a book of magic words and phrases. None of these statutory
11 schemes was enacted to allow debtors to escape their acknowledged debt through the simple
12 device of the incantation of the statutes' titles. As detailed below, Plaintiffs lack the evidence to
13 sustain a cause of action under any of these statutory schemes.
14

15 **RESPA** - The federal Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. §§
16 2601 through 2617, allows a borrower to inquire about the receipt and application of loan
17 payments. 12 U.S.C. § 2605(e)(1)(A). It does not give a borrower the unfettered right to inquire
18 into a lender's business practices. Nor does it excuse a borrower's obligation to repay its loan.
19

20 Plaintiffs continue to refer to the Borrower's purported seven qualified written requests
21 under RESPA. As discussed in the Cross-MSJ, the Kondaur Defendants received four letters
22 from the Borrower: (1) the Dispute Notice; (2) the Rescission Notice; (3) the Servicing
23 Request; and (4) the December Letter. Plaintiffs have not offered the three additional requests
24 they claim were made. Moreover, the Dispute Notice and the Rescission Notice do not request
25 any information at all, much less servicing information pursuant to RESPA. Consequently,
26

1 these two letters cannot be construed as a qualified written request. Be that as it may, the
2 Kondaur Defendants sent appropriate responses to all four letters they received from Plaintiffs.
3 Thus, there is no underlying predicate for a RESPA violation.

4 Moreover, RESPA violations are simply not a basis to void a loan and keep the
5 proceeds. It bears repeating that RESPA specifically states: "Nothing in this chapter shall affect
6 the validity or enforceability of any sale or contract for the sale of real property or any loan,
7 loan agreement, mortgage, or lien made or arising in connection with a federally related
8 mortgage loan." 12 U.S.C. § 2615. Thus, Plaintiffs cannot use RESPA to avoid repayment of
9 the Borrower's loan.
10

11 **TILA and HOEPA** -Without any discussion of the statutory provisions of the Truth in
12 Lending Act ("TILA"), 15 U.S.C. §§ 1601 *et seq.*, or the Home Owner's Equity Protection Act
13 ("HOEPA"), 15 U.S.C. § 1639, Plaintiffs simply declare that they apply and the Plaintiffs are
14 allowed to pursue claims for nondescript violations of these laws. Once again, the Plaintiffs are
15 mistaken.
16

17 By its own terms, TILA does not apply to loans used for the initial construction of a
18 dwelling. 15 U.S.C. § 1635(e)(1) (TILA does not apply to "residential mortgage transactions");
19 15 U.S.C. § 1602(w) ("residential mortgage transactions" include those in which proceeds are
20 used "to finance the acquisition or initial construction of . . . dwelling"); 12 C.F.R. Part
21 226.23(f)(1) ("The right to rescind does not apply to . . . [a] residential mortgage transaction.").
22 The McKinney Loan was for the construction of the Borrower's residence. Thus, TILA simply
23 does not apply. For this same reason, HOEPA also does not apply. 15 U.S.C. § 1602(aa)
24 (HOEPA does not apply to "residential mortgage transaction").
25
26

1 Additionally, HOEPA does not apply because the McKinney Loan was not a high
2 interest loan under 15 U.S.C. § 1602(aa)(1)(A). Nor did the "total points and fees payable by
3 the consumer at or before closing" exceed "8 percent of the total loan amount." 15 U.S.C. §
4 1602(aa)(1)(B). Indeed, the final settlement statement for the McKinney Loan reflects total fees
5 of \$2,635.33, or less than 1% of the total loan amount. Plaintiffs have submitted no
6 countervailing evidence establishing that the McKinney Loan exceeded these threshold
7 HOEPA requirements.

8
9 Finally, even if TILA and/or HOEPA applied, Plaintiffs' actions would be time-barred
10 under 15 U.S.C. § 1640. Under that section, an action for damages must be brought "within one
11 year from *the date of the occurrence of the violation*." 15 U.S.C. § 1640(e) (emphasis added).
12 The federal authorities are clear that the "date of the occurrence of the violation" refers to the
13 date "the loan documents were signed." *Meyer v. Ameriquest Mortgage Co.*, 342 F.3d 899, 902
14 (9th Cir. 2003). Thus, even if a discovery rule were applied, the date a violation reasonably
15 should have been discovered is the date the underlying documents were signed. The present
16 lawsuit was filed almost three years after the Borrower signed the McKinney Loan documents
17 and is, therefore, barred.

18
19 **FDCPA** - Plaintiffs have offered no evidence supporting a claimed violation of the Fair
20 Debt Collection Practices Act. 15 U.S.C. § 1692. The act of disputing a debt simply does not
21 afford Plaintiffs with an unending right to forestall collection, particularly when the Borrower
22 has acknowledged that he "owe[s] somebody." [Universal Response at ¶18] At most, the
23 Borrower's feigned dispute required the Kondaur Defendants to verify the debt, which they did
24 with (1) the McKinney Note; (2) the McKinney Trust Deed; and (3) the payment history on the
25 McKinney Loan. [SOF ¶16]
26

1 **Plaintiffs' Various Tort Claims Fail**

2 The Plaintiffs have proffered no evidence to support their claims of fraud, consumer
3 fraud, intentional infliction of emotional distress, or wrongful foreclosure.⁵ Instead, all of the
4 evidence reflects that Kondaur Capital is the valid assignee of the McKinney Note and the
5 McKinney Trust Deed and has proceeded within its rights under those documents.

6 Plaintiffs claim that the identity of the real party in interest has been shrouded from
7 them. Nothing could be further from the truth. Instead, the evidence reflects that (1) McKinney
8 borrowed money from M&I Bank as evidenced by the McKinney Note; (2) McKinney secured
9 repayment of that loan with the McKinney Trust Deed; and (3) both of those instruments were
10 assigned by M&I Bank to Kondaur Capital through the McKinney Allonge and the recorded
11 McKinney Assignment. Thus, there are no "obvious gaps" in the chain of title. Rather, that
12 "chain" is readily apparent and shows that Kondaur Capital is the holder of the McKinney Note
13 and beneficiary under the McKinney Trust Deed. Plaintiffs have been repeatedly informed of
14 this fact and simply refuse to accept it because doing so would require them to abandon their
15 entire scheme to escape the Borrower's debt. In short, none of Plaintiffs' wild speculation is
16 supported by the actual evidence.

17 Likewise, Plaintiffs' unsupported reference to their belief that the McKinney Note was
18 securitized and/or bifurcated from the McKinney Trust Deed does not establish any tort. But
19 even if it did, there is simply no evidence that the McKinney Note was securitized or bifurcated
20 from the McKinney Trust Deed. Instead, the evidence shows that M&I Bank assigned its
21 interests under the McKinney Note and the McKinney Trust Deed to Kondaur Capital.

22
23
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25
26 ⁵ Plaintiffs' Complaint does not set forth a cause of action for wrongful recording. Plaintiffs merely refer to such a claim in their response to the Cross-MSJ.

1 Further confusing the issues, Plaintiffs argue the Kondaur Defendants are liable under
2 principles of agency. However, the Kondaur Defendants are not the agents of any other party to
3 this litigation. Rather, Kondaur Capital is the assignee of the McKinney Note and the
4 McKinney Trust Deed. It is simply not an agent of Plaintiffs or anyone else in this matter.

5 **A.R.S. § 33-811(C) is Alive and Well**

6 In their pending Motion to Quash Temporary Restraining Order ("Motion to Quash"),
7 the Kondaur Defendants argued that Plaintiffs had waived all defenses to the Trustee's Sale by
8 failing to obtain an order enjoining the sale before 5:00 p.m. on January 4, 2010. That argument
9 was based on the plain language of A.R.S. § 33-811(C), which states in pertinent part:

11 The trustor, its successors or assigns, and all persons to whom the
12 trustee mails a notice of a sale under a trust deed pursuant to § 33-
13 809 shall waive all defenses and objections to the sale not raised in
14 an action that results in the issuance of a court order granting relief
15 pursuant to rule 65, Arizona rules of civil procedure, entered
16 before 5:00 p. m. Mountain standard time on the last business day
17 before the scheduled date of the sale.

18 In their opposition to the Motion to Quash, Plaintiffs did not address § 33-811(C). Now,
19 however, they claim that a non-judicial trustee's sale is unconstitutional for want of procedural
20 and substantive due process. Such is not the case.

21 Some form of state action is the *sine qua non* of a due process violation. *Dimond v.*
22 *Samaritan Health Service*, 27 Ariz. App. 682, 683-84, 558 P.2d 710, 711-12 (1976) (federal
23 and state due process clauses apply "only to state action"); *see also Wyatt v. Ruck Const., Inc.*,
24 117 Ariz. 186, 191, 571 P.2d 683, 688 (App. 1977). Kondaur Capital's use of Arizona's trustee's
25 sale statutes does not amount to state action. "'Something more' is required to convert a private
26 party into a state actor than the exercise of statutory rights." *Beck v. Communications Workers*
of America, 776 F.2d 1187, 1222 (4th Cir. 1985). "Otherwise, 'private parties could face
constitutional litigation whenever they seek to rely on some state rule governing their

1 interactions with the community surrounding them." *Id.*, quoting *Lugar v. Edmondson Oil Co.,*
2 *Inc.*, 457 U.S. 922, 937, 102 S.Ct. 2744, 2754 (1982).

3 Further, even if there was a state actor in sight, the Plaintiffs received all the process
4 they were due. Under Arizona law, a trustee must record notice of the trustee's sale at least
5 ninety-one days before the sale is scheduled to occur. A.R.S. § 33-808(C)(1). This gives
6 anyone with an interest in the property at least ninety days to file a complaint and obtain an
7 order enjoining the sale. § 33-811(C). Indeed, that is precisely what the Borrower attempted to
8 do when he filed his first lawsuit in September 2009 and requested an *ex parte* restraining
9 order. Although that order was not forthcoming, Kondaur Capital voluntarily postponed the
10 Trustee's Sale, effectively giving Plaintiffs even more time to contest it. That Plaintiffs failed to
11 obtain an order enjoining the Trustee's Sale within the time limits of § 33-811(C) simply cannot
12 be characterized as a lack of due process. Plaintiffs had access to the Court and an adequate
13 amount of time to make use of it.

14 **CONCLUSION**

15 Each and every one of Plaintiffs asserted claims is nothing more than a transparent and
16 groundless attempt to avoid the Borrower's obligations. The Court should now reject those
17 baseless attempts, grant the Cross-MSJ, and award the Kondaur Defendants their reasonable
18 attorneys' fees and costs in defending this meritless lawsuit.

19 RESPECTFULLY SUBMITTED April 27, 2010.

20 **GUST ROSENFELD, P.L.C.**

21
22
23 By: 

24 Mark L. Collins

25 Robert M. Savage

26 *Attorneys for Defendants Kondaur Capital
Corporation, Kondaur Venture X, LLC, and
Kondaur Capital Trust Series 2009-3,
Paula Chastain and Peter Bai*

1 Original mailed for filing April 27, 2010
2 with a copy to:

3 The Honorable William J. O'Neil
4 The Honorable Gilberto V. Figueroa
5 PINAL COUNTY SUPERIOR COURT

6 Copies mailed April 27, 2010 to:

7 James McKinney
8 James McKinney
9 618 S. Wickiup Road
10 Apache Junction, AZ 85119
11 *Pro Per Plaintiffs*

12 Laura Sixkiller
13 GREENBERG TRAURIG, LLP
14 2375 E. Camelback Road, Ste 700
15 Phoenix, AZ 85016
16 *Attorneys for Defendant M&I Marshall & Ilsley Bank*

17 Larry O. Folks
18 Kathleen Weber
19 FOLKS & O'CONNOR, PLLC
20 1850 N. Central Ave., Ste. 1140
21 Phoenix, AZ 85004
22 *Attorneys for Defendant Folks & O'Connor, PLLC*

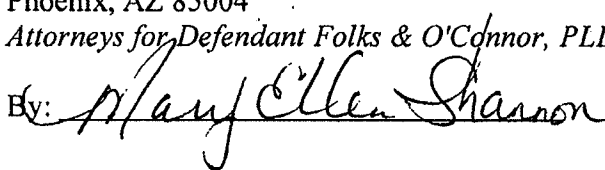
23 By: 
24
25
26

Exhibit A

ALLONGE

KONDAUR CAPITAL CORPORATION

PAY TO THE ORDER OF: _____

A promissory for loan account number: 35662154-40000 for \$408,458.00

Covering property located at:
618 S Wicklup Rd., APACHE JUNCTION, AZ, 85219, between JAMES MCKINNEY
and M&I Marshall & Ilsley Bank WITHOUT RECOURSE.

BY: 

JOHN A. MURONI, VICE PRESIDENT

KONDAUR/McKinney-00271

Exhibit B



M&I Marshall & Ilsley Bank
770 North Water Street
Milwaukee, WI 53202-3509
414 765-7700
mibank.com

SECRETARY'S CERTIFICATE

I, Gina M. McBride, do hereby certify that I am the duly appointed Secretary of the Board of Directors of M&I Marshall & Ilsley Bank (the "Bank"), a Wisconsin banking institution, and as such Secretary, I have custody of the books, records and files of said Board of Directors.

I further certify that the following is a true and correct copy of a resolution adopted at a meeting of the Board of Directors of M&I Marshall & Ilsley Bank held on February 19, 2009, at which all members were present:

M&I Support Services Co.

"WHEREAS, M&I Support Services Co., a division of the Bank ("Support Co.") is in the business of, among other things, providing operational, administrative and support functions, including loan servicing, loan application processing, and other banking related services; and

WHEREAS, Support Co., as a division, provides services to the Bank in connection with the processing, documenting, underwriting, servicing and administering of residential mortgage loans originated by the Bank; and

WHEREAS, the Board of Directors had determined that it is in the best interest of the Bank and its shareholders to appoint certain employees of the Bank to facilitate the servicing and administering of residential mortgage loans.

FURTHER RESOLVED, that the officers listed below are authorized to act in the Bank's name with respect to certain activities related to residential mortgage loans. These activities are deemed to include mortgage satisfactions, assignments, endorsements of payments and other documents, hazard insurance losses and all other necessary and appropriate matters; and

FURTHER RESOLVED, that the officers listed below are authorized from time to time to take all actions they deem necessary or appropriate to carry out the intent of the foregoing resolutions:

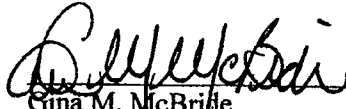
Marge Bauman
Sandi Birschbach
John Felden
Jeff Heinzelmann
Sue Kletzke
Lucinda Michalovitz
Shane Noyce
Kim Klein Tonnessen
Wendy Wipperfurth

Sara Baumann
Dwight Brady
Mark Goltz
Patricia Horn
Dee Kline
Maggie Morgan
Cindy Schlichting
Brea Vang

Julie Beene
Brian Covelli
Tanya Lynn Goth
Katy Hurley
Cheri Mann
John Muroi
Kara Sieg
Jeff Whitbeck

I further certify that effective January 1, 2008, John A. Muroi was elected to the position of Vice President of the Bank and is currently serving in such capacity, qualified and authorized to act on behalf of the Bank, and the resolutions electing him as such are in full force and effect.

IN WITNESS WHEREOF, the undersigned has hereunto set her hand and affixed the corporate seal of M&I Marshall & Ilsley Bank this 22nd day of April 2010.

A handwritten signature in dark ink, appearing to read "Gina M. McBride", is written over a horizontal line.

Gina M. McBride
Secretary

Exhibit C



M&I Marshall & Ilsley Bank
770 North Water Street
Milwaukee, WI 53202-3509
414-765-7700
mlbank.com

JAMES H MCKINNEY
618 SOUTH WICKIUP
APACHE JUNCTION, AZ 85219-2577

April 2, 2009

Our records indicate that you are in default on your promissory note, dated 02/07/07, for nonpayment of amounts due as shown below.

Late Payments	02/01/09	\$2,375.76
	03/01/09	\$2,375.75
	04/01/09	\$2,375.76
		\$.00
Delinquency Charges		\$237.58
<hr/>		
Total		\$7,364.85

You may cure the defaults on or before May 02, 2009 by paying \$7,364.85.

Failure to cure the delinquency on or before the above date may result in M&I Marshall and Ilsley Bank declaring the entire unpaid amount due and payable without further demand, foreclosing by judicial proceeding and selling the mortgaged property. You may have the right to have the loan reinstated by taking actions, which may be specified in the Note and Mortgage. In any foreclosure proceeding, you have the right to assert any defenses you may have to the acceleration and sale including the non-existence of any default.

Partial payments may be accepted, but if the total cure amount listed is not remitted by the date listed herein, we may continue with a default action against you. At this time, your ability to make additional loans has been suspended. If the amount listed on the cure is satisfied within the time frame described above, we will re-establish your ability to continue to make additional loans in accordance to your contract.

This letter supersedes and revokes all prior verbal statements by representatives of the bank concerning your loan.

Sincerely,

Account No: 098-35662154-40000

M&I Bank Collections Department
1-866-590-7862

If you were discharged in a Chapter 7 Bankruptcy, we will not attempt to collect this discharged debt from you. However, we are permitted to foreclose on the property given as security for the debt.

See reverse side for important disclosure information

KONDAUR/McKinney-00283

**United States Department of Housing and Urban Development
Servicemembers Civil Relief Act Notice**

Legal Rights and Protections Under the SCRA

Servicemembers on "active duty" or "active service," or a dependent of such a servicemember may be entitled to certain legal protections and debt relief pursuant to the Servicemembers Civil Relief Act (50 USC App. §§ 501-596) (SCRA).

Who May Be Entitled to Legal Protections Under the SCRA?

- Active duty members of the Army, Navy, Air Force, Marine Corps, Coast Guard, and active service National Guard;
- Active service members of the commissioned corps of the National Oceanic and Atmospheric Administration;
- Active service members of the commissioned corps of the Public Health Service;
- United States citizens serving with the armed forces of a nation with which the United States is allied in the prosecution of a war or military action; and
- Their spouses.

What Legal Protections Are Servicemembers Entitled To Under the SCRA?

- The SCRA states that, a debt incurred by a servicemember, or servicemember and spouse jointly, prior to entering military service shall not bear interest at a rate above 6 percent during the period of military service.
- The SCRA states that, in a legal action to enforce a debt against real estate that is filed during, or within 9 months after the servicemember's military service, a court may stop the proceedings for a period of time, or adjust the debt. In addition, the sale, foreclosure, or seizure of real estate shall not be valid if it occurs during, or within 9 months after the servicemember's military service unless the creditor has obtained a court order approving the sale, foreclosure, or seizure of the real estate.
- The SCRA contains many other protections besides those applicable to home loans.

How Does A Servicemember or Dependent Request Relief Under the SCRA?

- A servicemember or dependent, or both, may request relief under the SCRA by providing the lender a written notice with a copy of the servicemember's military orders. M&I Marshall & Ilsley Bank
PO Box 2035
Milwaukee, WI 53201-9919

How Does a Servicemember or Dependent Obtain Information About the SCRA?

- Servicemembers and dependents with questions about the SCRA should contact their unit's Judge Advocate, or their installation's Legal Assistance Officer. A military legal assistance office locator for each branch of the armed forces is available at: <http://legalassistance.law.af.mil/content/locator.php>.
- The U. S. Department of Defense's information resource is "Military One Source." The toll-free telephone numbers for Military One Source are: From the United States: 1-800-342-9647. From outside the United States (where available): 1-800-342-6477. International collect: 484-530-5747.

HUD Disclosure

Homeownership counseling is available to you. If you prefer to discuss your situation with an independent third party, the United States Department of Housing and Urban Development (HUD) provides homeowner counseling services nationwide. Please call the HUD toll-free telephone number at 1-800-569-4287 to obtain a list of HUD approved nonprofit homeownership counseling organizations in your residential area.

FACT Act Disclosure

We may report information about your account to credit bureaus. Late payments, missed payments or other defaults on your account may be reflected in your credit report.

General Information Disclosure

M&I Bank is attempting to collect a debt and information obtained will be used for that purpose.

Loss Mitigation

If you are having difficulties making your payments, M&I Marshall & Ilsley Bank's Loss Mitigation Group may be able to offer alternative options to help you keep your property. Please contact the Loss Mitigation Group at 1-866-473-4333.

EXHIBIT 10

1 **GREENBERG TRAURIG, LLP**

2 ATTORNEYS AT LAW
3 SUITE 700
2375 EAST CAMELBACK ROAD
PHOENIX, ARIZONA 85016
(602) 445-8000

4 Laura Sixkiller, SBN 022014; sixkillerl@gtlaw.com
5 Attorney for Defendant M&I Marshall & Ilsley Bank

6
7 IN THE SUPERIOR COURT OF ARIZONA
8 PINAL COUNTY

9 JAMES McKINNEY, an individual,
10 JAMES McKINNEY, an individual, Real
Parties in Interest

11 Plaintiffs,

12 v.

13 KONDAUR CAPITAL CORPORATION,
14 et al.,

15 Defendants.

Case No. CV2010-00977

**M&I MARSHALL & ILSLEY BANK'S
JOINDER IN THE KONDAUR
DEFENDANTS' REPLY IN SUPPORT
OF THE CONSOLIDATED CROSS-
MOTION FOR SUMMARY
JUDGMENT AND DEFENDANT
FOLKS & O'CONNOR, PLLC'S
REPLY IN SUPPORT OF MOTION TO
DISMISS**

(Oral Argument Requested)

(Assigned to the William J. O'Neil)

16
17
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19
20 Defendant M&I Marshall & Ilsley Bank ("M&I") hereby joins the Reply in
21 Support of the Consolidated Cross-Motion for Summary Judgment ("Cross-Motion") filed
22 by co-defendants Kondaur Capital Corporation, Kondaur Venture X, LLC, and Kondaur
23 Capital Trust Series 2009-3 (collectively, the "Kondaur Defendants"). M&I further joins
24 in the Reply in Support of Motion to Dismiss filed by co-defendants Folks & O'Connor
25 PLLC ("Folks & O'Connor") on March 29, 2010.
26

1 For the sake of brevity, M&I incorporates by reference both the Kondaur
2 Defendants' Reply and the Folks & O'Connor Reply as if fully set forth herein. Put
3 simply, Plaintiffs' responses in opposition to the Cross-Motion and Motion to Dismiss fail
4 to save their claims. As demonstrated more fully in the Kondaur Defendants' Reply and
5 the Folks & O'Connor Reply, Plaintiffs have not and cannot state a prima facie cause of
6 action against any of the defendants, including M&I, in this action as a matter of law.

7 In further support of this Reply and the Reply filed by the Kondaur Defendants,
8 M&I submits the Affidavit of Valerie Turinske, a Support Supervisor of M&I Retail
9 Collections, wherein Ms. Turinske confirms that the April 2, 2009 Default Notice attached
10 to her Affidavit as Exhibit A is a true and correct copy of the default notice sent to
11 Plaintiffs when M&I held the loan. (See Affidavit of Valerie Turinske, dated April 26,
12 2010, attached hereto as **Exhibit "1"** and incorporated by this reference, at ¶ 2.) M&I
13 also submits an original Secretary's Certificate, which was executed by Gina M. McBride
14 in her capacity as Secretary of the Board of Directors of M&I, authorizing John Muroi,
15 among others, to act on M&I's behalf. (See Secretary's Certificate, attached hereto as
16 **Exhibit "2"** and incorporated herein by this reference.) As the Secretary's Certificate
17 makes plain, Mr. Muroi was elected to the position of Vice President of M&I effective
18 January 1, 2008 and in such capacity is "qualified and authorized to act on behalf of the
19 Bank, and the resolutions electing him as such are in full force and effect." (*Id.*, p. 2.)

20 For all of the reasons stated herein as well as in the Cross-Motion, Motion to
21 Dismiss, and the Reply briefs submitted by the Kondaur Defendants and Folks &
22 O'Connor, M&I respectfully requests that the Court enter summary judgment against
23 Plaintiffs and in favor of M&I.

24 ///

25 ///

26 ///

1 RESPECTFULLY SUBMITTED this 27th day of April, 2010.

2 GREENBERG TRAURIG, LLP

3
4 By: 

5 Laura Sixkiller

6 Attorneys for Defendant M&I Marshall & Ilsley
7 Bank

8 ORIGINAL of the foregoing
9 electronically filed this 27th day of April, 2010
10 with the Clerk of the Court.

11 COPY of the foregoing hand-delivered
12 this 27th day of April, 2010 to:

13 The Honorable William J. O'Neil
14 Pinal County Superior Court

15 COPY of the foregoing emailed* and mailed
16 this 27th day of April, 2010 to:

17 James McKinney
18 618 Wickiup Road
19 Apache Junction, AZ 85110
20 Email: jmckinney@hushmail.com

21 Mark L. Collins, Esq.*
22 Robert M. Savage, Esq.*
23 GUST ROSENFELD P.L.C.
24 One S. Church Avenue, Suite 1900
25 Tucson, Arizona 85701-1627
26 Email: mcollins@gustlaw.com
Email: rsavage@gustlaw.com

///

///

//

1 Kathleen Webber, Esq.*
2 Larry O. Folks, Esq.*
3 FOLKS & O'CONNOR, PLLC
4 1850 N. Central Avenue, Suite 1140
5 Phoenix, Arizona 85004
6 Email: Weber@folksconnor.com

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EXHIBIT 1

EXHIBIT 1

1 Laura Sixkiller (SBN 022014)
2 Attorney for Defendants M&I Marshall & Ilsley Bank

3 IN THE SUPERIOR COURT OF ARIZONA
4 PINAL COUNTY

5 JAMES McKINNEY, an individual,
6 JAMES McKINNEY, an individual, Real
7 Parties in Interest

8 Plaintiffs,

9 v.

10 KONDAUR CAPITAL CORPORATION,
11 a Delaware corporation; KONDAUR
12 VENTURE X, LLC, a Delaware LLC;
13 KONDAUR CAPITAL TRUST SERIES
14 2009-3, a Delaware statutory trust;
15 DEUTSCHE BANK TRUST COMPANY
16 DELAWARE, a Delaware corporation;
17 PAULA CHASTAIN, an individual;
18 PETER BAI, an individual; FOLKS AND
19 O'CONNOR, PLLC, an Arizona LLC;
20 SECURITY TITLE AGENCY, an Arizona
21 corporation; M&I MARSHALL AND
22 ILSLEY BANK, a Wisconsin corporation;
23 JENNIFER MENGES; an individual;
24 JOHN DOES and JANE DOES, husband
25 and wife; JOHN DOES and JANE DOES I-
26 X; ABC CORPORATIONS I-V; XYZ
PARTNERSHIPS I-V; ABC LLCs I-V; and
XYZ TRUSTS I-V,

Defendants.

Case No. CV2010-0970

AFFIDAVIT OF VALERIE TURINSKE

STATE OF WISCONSIN)
) SS
COUNTY OF MILWAUKEE)

Valerie Turinske, being first duly sworn on oath, deposes and states as follows:


1 1. I am a Support Supervisor of M&I Retail Collections at M&I Marshall & Ilsley Bank
2 ("M&I") and I make this affidavit based on my personal knowledge and upon my review of
3 M&I's records.

4 2. Attached hereto as Exhibit A is a true and correct copy of the April 2, 2009 Default
5 Notice M&I sent to Defendant James McKinney when M&I held the loan ("Default Notice").
6

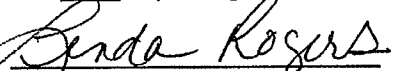
7 3. The Default Notice was made and held by M&I in the regular course of business. As
8 a Support Supervisor, I am familiar with the Default Notice and the manner in which it was
9 compiled and maintained.

10 4. The Default Notice was made at or near the time of the transaction in the records, from
11 information transmitted by a person with personal knowledge of the transaction.
12

13 5. The Default Notice was made and kept in the regular course of M&I's business, while
14 it serviced the loan to Defendant James McKinney.
15

16
17 
18 Valerie Turinske

19 Signed and sworn to before me
20 this 30 day of April, 2010.

21 
22 Notary Public, State of Wisconsin
My Commission: 9/11/2013

23 4904077_1

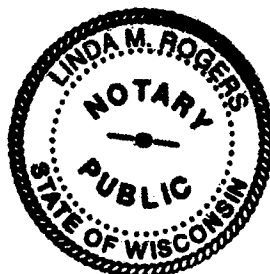


EXHIBIT A

EXHIBIT A



M&I Marshall & Ilsley Bank
770 North Water Street
Milwaukee, WI 53202-3509
414-765-7700
mibank.com

JAMES H MCKINNEY
618 SOUTH WICKIUP
APACHE JUNCTION, AZ 85219-2577

April 2, 2009

Our records indicate that you are in default on your promissory note, dated 02/07/07, for nonpayment of amounts due as shown below.

Late Payments	02/01/09	\$2,375.76
	03/01/09	\$2,375.75
	04/01/09	\$2,375.76
		\$.00
Delinquency Charges		\$237.58
<hr/>		
Total		\$7,364.85

You may cure the defaults on or before May 02, 2009 by paying \$7,364.85.

Failure to cure the delinquency on or before the above date may result in M&I Marshall and Ilsley Bank declaring the entire unpaid amount due and payable without further demand, foreclosing by judicial proceeding and selling the mortgaged property. You may have the right to have the loan reinstated by taking actions, which may be specified in the Note and Mortgage. In any foreclosure proceeding, you have the right to assert any defenses you may have to the acceleration and sale including the non-existence of any default.

Partial payments may be accepted, but if the total cure amount listed is not remitted by the date listed herein, we may continue with a default action against you. At this time, your ability to make additional loans has been suspended. If the amount listed on the cure is satisfied within the time frame described above, we will re-establish your ability to continue to make additional loans in accordance to your contract.

This letter supersedes and revokes all prior verbal statements by representatives of the bank concerning your loan.

Sincerely,

Account No: 098-35662154-40000

M&I Bank Collections Department
1-866-590-7862

If you were discharged in a Chapter 7 Bankruptcy, we will not attempt to collect this discharged debt from you. However, we are permitted to foreclose on the property given as security for the debt.

See reverse side for important disclosure information



**United States Department of Housing and Urban Development
Servicemembers Civil Relief Act Notice**

Legal Rights and Protections Under the SCRA

Servicemembers on "active duty" or "active service," or a dependent of such a servicemember may be entitled to certain legal protections and debt relief pursuant to the Servicemembers Civil Relief Act (50 USC App. §§ 501-596) (SCRA).

Who May Be Entitled to Legal Protections Under the SCRA?

- Active duty members of the Army, Navy, Air Force, Marine Corps, Coast Guard, and active service National Guard;
- Active service members of the commissioned corps of the National Oceanic and Atmospheric Administration;
- Active service members of the commissioned corps of the Public Health Service;
- United States citizens serving with the armed forces of a nation with which the United States is allied in the prosecution of a war or military action; and
- Their spouses.

What Legal Protections Are Servicemembers Entitled To Under the SCRA?

- The SCRA states that, a debt incurred by a servicemember, or servicemember and spouse jointly, prior to entering military service shall not bear interest at a rate above 6 percent during the period of military service.
- The SCRA states that, in a legal action to enforce a debt against real estate that is filed during, or within 9 months after the servicemember's military service, a court may stop the proceedings for a period of time, or adjust the debt. In addition, the sale, foreclosure, or seizure of real estate shall not be valid if it occurs during, or within 9 months after the servicemember's military service unless the creditor has obtained a court order approving the sale, foreclosure, or seizure of the real estate.
- The SCRA contains many other protections besides those applicable to home loans.

How Does A Servicemember or Dependent Request Relief Under the SCRA?

- A servicemember or dependent, or both, may request relief under the SCRA by providing the lender a written notice with a copy of the servicemember's military orders. M&I Marshall & Ilsley Bank
PO Box 2035
Milwaukee, WI 53201-9919

How Does a Servicemember or Dependent Obtain Information About the SCRA?

- Servicemembers and dependents with questions about the SCRA should contact their unit's Judge Advocate, or their installation's Legal Assistance Officer. A military legal assistance office locator for each branch of the armed forces is available at: <http://legalassistance.law.af.mil/content/locator.php>.
- The U. S. Department of Defense's information resource is "Military One Source." The toll-free telephone numbers for Military One Source are: From the United States: 1-800-342-9647. From outside the United States (where available): 1-800-342-6477. International collect: 484-530-5747.

HUD Disclosure

Homeownership counseling is available to you. If you prefer to discuss your situation with an independent third party, the United States Department of Housing and Urban Development (HUD) provides homeowner counseling services nationwide. Please call the HUD toll-free telephone number at 1-800-569-4287 to obtain a list of HUD approved nonprofit homeownership counseling organizations in your residential area.

FACT Act Disclosure

We may report information about your account to credit bureaus. Late payments, missed payments or other defaults on your account may be reflected in your credit report.

General Information Disclosure

M&I Bank is attempting to collect a debt and information obtained will be used for that purpose.

Loss Mitigation

If you are having difficulties making your payments, M&I Marshall & Ilsley Bank's Loss Mitigation Group may be able to offer alternative options to help you keep your property. Please contact the Loss Mitigation Group at 1-866-473-4333.

EXHIBIT 2

EXHIBIT 2



M&I Marshall & Ilsley Bank
770 North Water Street
Milwaukee, WI 53202-3509
414 765-7700
mibank.com

SECRETARY'S CERTIFICATE

I, Gina M. McBride, do hereby certify that I am the duly appointed Secretary of the Board of Directors of M&I Marshall & Ilsley Bank (the "Bank"), a Wisconsin banking institution, and as such Secretary, I have custody of the books, records and files of said Board of Directors.

I further certify that the following is a true and correct copy of a resolution adopted at a meeting of the Board of Directors of M&I Marshall & Ilsley Bank held on February 19, 2009, at which all members were present:

M&I Support Services Co.

"WHEREAS, M&I Support Services Co., a division of the Bank ("Support Co.") is in the business of, among other things, providing operational, administrative and support functions, including loan servicing, loan application processing, and other banking related services; and

WHEREAS, Support Co., as a division, provides services to the Bank in connection with the processing, documenting, underwriting, servicing and administering of residential mortgage loans originated by the Bank; and

WHEREAS, the Board of Directors had determined that it is in the best interest of the Bank and its shareholders to appoint certain employees of the Bank to facilitate the servicing and administering of residential mortgage loans.

FURTHER RESOLVED, that the officers listed below are authorized to act in the Bank's name with respect to certain activities related to residential mortgage loans. These activities are deemed to include mortgage satisfactions, assignments, endorsements of payments and other documents, hazard insurance losses and all other necessary and appropriate matters; and

FURTHER RESOLVED, that the officers listed below are authorized from time to time to take all actions they deem necessary or appropriate to carry out the intent of the foregoing resolutions:

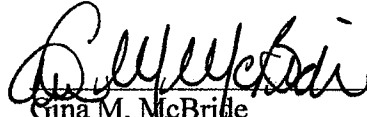
Marge Bauman
Sandi Birschbach
John Felden
Jeff Heinzelmann
Sue Kletzke
Lucinda Michalovitz
Shane Noyce
Kim Klein Tonnessen
Wendy Wipperfurth"

Sara Baumann
Dwight Brady
Mark Goltz
Patricia Horn
Dee Kline
Maggie Morgan
Cindy Schlichting
Brea Vang

Julie Beene
Brian Covelli
Tanya Lynn Goth
Katy Hurley
Cheri Mann
John Muron
Kara Sieg
Jeff Whitbeck

I further certify that effective January 1, 2008, John A. Muroi was elected to the position of Vice President of the Bank and is currently serving in such capacity, qualified and authorized to act on behalf of the Bank, and the resolutions electing him as such are in full force and effect.

IN WITNESS WHEREOF, the undersigned has hereunto set her hand and affixed the corporate seal of M&I Marshall & Ilsley Bank this 22nd day of April 2010.

A handwritten signature in dark ink, appearing to read "Gina M. McBride", is written over a horizontal line.

Gina M. McBride
Secretary

EXHIBIT 11

RECEIVED

FEB 11 2010

LES

1 Larry O. Folks, #012142
2 Kathleen A. Weber, #016076
3 FOLKS & O'CONNOR, PLLC
4 1850 N. Central Ave, #1140
5 Phoenix, Arizona 85004
6 (602) 515-0129
7 (weber@folksoconnor.com)
8 Attorneys for Defendant Folks &
9 O'Connor, PLLC

10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

11 **IN AND FOR THE COUNTY OF MARICOPA**

12 JAMES McKINNEY, an individual,
13 JAMES McKINNEY, an individual,
14 Real Parties in Interest,

15 Plaintiffs,

16 vs.

17 KONDAUR CAPITAL
18 CORPORATION, a Delaware
19 corporation; et al.,

20 Defendants.

Case No.: CV2010-090122

**MOTION TO DISMISS BY
DEFENDANT FOLKS &
O'CONNOR, PLLC**

(Hon. Karen Potts)

21 Defendant Folks & O'Connor, PLLC ("Folks & O'Connor") hereby moves the
22 Court to dismiss the Complaint against it filed by Plaintiffs James McKinney and James
23 McKinney ("Plaintiffs"), pursuant to Rule 12(b)(6) of the Arizona Rules of Civil
24 Procedure on the grounds that the claims: (i) are barred by res judicata and Rule 41(b)
25 Ariz.R.Civ.P.; (ii) are barred by A.R.S. § 33-807(E); (iii) lack sufficient facts to state
26 the claim in violation of Rule 12(b)(6), Ariz.R.Civ.P., as interpreted by *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 1965 (2007); (iv) fail to comply with Rule 8(a) Ariz.R.Civ.P.; and (v) fail to satisfy the heightened pleading standard applicable to fraud allegations under Rule 9(b), Ariz.R.Civ.P. This Motion to Dismiss is submitted pursuant Ariz.R.Civ.P. 7.1 and is supported by the following Memorandum of Points and Authorities which is incorporated herein by this reference.

FOLKS & O'CONNOR, PLLC
1850 NORTH CENTRAL AVE, SUITE 1140
PHOENIX, ARIZONA 85004
(602) 262-2265

MEMORANDUM OF POINTS AND AUTHORITIES

I. PROCEDURAL HISTORY

On August 8, 2009, Plaintiff filed a Complaint commencing Pinal County Superior Court Case No. CV200903764 (the "Pinal Action") to prevent the foreclosure of his property located in Apache Junction, Pinal County, Arizona (the "Property"). The issues raised in the Pinal Action are the same in this case which was commenced when Plaintiffs filed the Complaint for this action, Maricopa County Superior Court Case No. CV2010-090122, on January 5, 2010 (the "Maricopa Action").

In the Pinal Action, Plaintiff asserted the following twelve causes of action against all defendants, including Folks & O'Connor: Breach of Contract; Violation of Arizona Consumer Fraud Act ("ACFA"); Violation of the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.* ("TILA"); Violation of Home Ownership and Equity Protection Act, 15 U.S.C. § 1639 ("HOEPA"); Quiet Title under A.R.S. § 12-1102 *et seq.*; (vi) Violation of the Fair Debt Collections Practices Act ("FDCPA"); Violation of the Arizona Assignment and Satisfaction of Mortgage Law and Invalid Deed of Trust Law under A.R.S. § 33-420 *et seq.*; Infliction of Emotional Distress; Fraud-Misrepresentation and Conspiracy; Conversion/ Civil Theft; Violation of the Uniform Commercial Code under A.R.S. § 47-3100 *et seq.* and Arizona's Recording Statute; and Civil RICO under 18 U.S.C. § 1961-1968 ("RICO"). A true and accurate copy of the Pinal Action Complaint is attached hereto as Exhibit B and incorporated herein by this reference. In the Complaint in the Maricopa Action, Plaintiffs assert the same claims as in the Pinal Action, except for: (i) the conversion/theft and RICO claims which were omitted from the Maricopa Action; and (ii) a lack of standing claim which was added to the Maricopa Action (but that issue was raised within the quiet title claim which is present in both Complaints).

1 In the Pinal Action, Folks & O'Connor filed a Motion to Dismiss all claims
2 against it on the grounds that the claims: (i) are barred by A.R.S. § 33-807(E); (ii) lack
3 sufficient facts to state the claim in violation of Rule 12(b)(6), Ariz.R.Civ.P., as
4 interpreted by *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 1965
5 (2007); (iii) fail to comply with Rule 8(a) Ariz.R.Civ.P.; and (iv) fail to satisfy the
6 heightened pleading standard applicable to fraud allegations under Rule 9(b),
7 Ariz.R.Civ.P. Judge William O'Neil granted Folks & O'Connor's Motion to Dismiss on
8 January 26, 2010. See ruling attached as Exhibit C.

9 **II. FACTS ALLEGED IN THE COMPLAINT**

10 The following is a summary of the allegations of the Complaint in the Maricopa
11 Action, which are assumed to be true solely for the purpose of this Motion. In 2007,
12 Plaintiff, James McKinney—the father, obtained a loan in the amount of \$408,458.00
13 (the "Loan") from Defendant M&I Marshall and Ilsley Bank ("M&I"). Compl. ¶ 30.
14 The Loan was secured by the Property. See Exhibit A to Compl.¹ Plaintiffs allege that
15 by letters dated June 4, 2009, June 20, 2009 and August 18, 2009, the Loan was
16 rescinded and Plaintiffs questioned the validity of the debt. Compl. ¶¶ 31, 61 77, and
17 106. On June 5, 2009, a Notice of Trustee's Sale was recorded to commence a non-
18 judicial foreclosure of the Property. Compl. ¶ 69. In July 2009, Kondaur Capital
19 Corporation ("KCC") assumed the Loan. Compl. at Exhibit A. Plaintiffs allege that
20

21 ¹ Generally, the court may not consider any material beyond the pleadings in ruling on a
22 Rule 12(b)(6) motion. *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542,
23 1555 n. 19 (9th Cir. 1990); *Lee v. City of L.A.*, 250 F.3d 668, 688 (9th Cir. 2001).
24 However, "material which is properly submitted as part of the complaint may be
25 considered on a motion to dismiss." *Branch v. Tunnell*, 14 F.3d 449, 453 (9th Cir.
26 1994), *cert. denied*, 512 U.S. 1219 (1994)(quoting *Hal Roach Studios*, 896 F.2d at 1555
n. 19), *overruled on other grounds*, *Galbraith v. County of Santa Clara*, 307 F.3d 1119
(9th Cir. 2002). Here, the Complaint attaches documentation identifying the Property as
the security for the Loan, as Exhibit A, making it part of the Complaint and fairly
considered as part of this Motion to Dismiss.

1 Defendants, including Folks & O'Connor, sent Plaintiffs letters regarding the Loan and
2 foreclosure from January through August 2009. Compl. ¶ 102.

3 Based upon the foregoing, Plaintiffs allege Folks & O'Connor: (i) breached their
4 "Trusteeship"; (ii) conspired with and aided and abetted other defendants with the non-
5 judicial foreclosure without standing to do so; (iii) lacks clean hands; (iv) is in breach;
6 and (v) did not respond to Plaintiffs' qualified written request dated August 18, 2009.
7 Compl. ¶¶ 71-76. While these allegations are made in the body of the Complaint, no
8 specific cause of action is asserted against Folks & O'Connor for acting as trustee.

9 III. LEGAL ANALYSIS

10 A. Standard for Motion to Dismiss

11 Rule 12(b)(6) permits dismissal of a claim either where that claim lacks a
12 cognizable legal theory, or where insufficient facts are alleged to support the plaintiff's
13 theory. *Balistreri v. Pacifica Police Dept.* 901 F.2d 696, 699 (9th Cir. 1988). In
14 resolving a Rule 12(b)(6) motion, the district court must construe the complaint in the
15 light most favorable to the plaintiff and accept all well-pleaded factual allegations as
16 true. *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996).

17 In order to survive a Rule 12(b)(6) motion, a complaint must allege "more than
18 labels and conclusions and a formulaic recitation of the elements of a cause of action[.]"
19 *Twombly*, 127 S.Ct. at 1964; *Clemens v. Daimler Chrysler Corp.*, 534 F.3d 1017, 1022
20 (9th Cir. 2008)("To avoid a Rule 12(b)(6) dismissal, a complaint need not contain
21 detailed factual allegations; rather it must plead 'enough facts to state a claim to relief
22 that is plausible on its face[.]' quoting *Twombly*). A complaint must contain factual
23 allegations sufficient "to raise a right to relief above the speculative level, on the
24 assumption that all the allegations in the complaint are true even if doubtful in fact."
25 *Twombly* 127 S.Ct. at 1965. "The pleading must contain something more . . . than . . . a
26 statement of facts that merely creates a suspicion [of] a legally cognizable right of

1 action.” *Id.*, (quoting 5 C. Wright & A. Miller, *Federal Practice and Procedure* § 1216,
2 pp. 235-36 (3d ed. 2004)); *Yadin Company, Inc. v. City of Peoria*, 2008 WL 906730, * 4
3 (D. Ariz. 2008)(“The Supreme Court also explained that Rule 8 requires a ‘showing,’
4 rather than a blanket assertion, of entitlement to relief.”) (internal quotation marks
5 omitted). The heightened standard set in *Twombly* was to prevent unnecessary and
6 expensive pretrial discovery just to demonstrate the groundlessness of a plaintiff’s case
7 in complex litigation. *Id.*

8 **B. Res judicata and Rule 41(b)**

9 “Under the doctrine of res judicata, a judgment ‘on the merits’ in a prior lawsuit
10 involving the same parties or their privies bars a second suit based on the same cause of
11 action.” Aldrich and Steinberger v. Martin, 172 Ariz. 445, 448, 837 P.2d 1180, 1183
12 (App. 1992), citing Lawler v. National Screening Service Corp., 349 U.S. 322, 326, 75
13 S.Ct. 865, 867, 99 L. Ed. 1122, 1126 (1955). If the requisite conditions exist for the
14 application of the doctrine of res judicata, the doctrine bars a second suit between the
15 parties or privies based on the same cause of action, even where the judgment in the
16 first action is entered after the second action is filed. Murphy v. Board of Medical
17 Examiners, 190 Ariz. 441, 449, 949 P.2d 530, 538 (App. 1997). Additionally, the
18 “doctrine of res judicata binds the same parties standing in the subsequent litigation on
19 the same cause of action, not only upon the facts actually litigated, but also upon those
20 points which might have been (even though not expressly) litigated.” Aldrich, 172 Ariz.
21 at 448, 837 P.2d at 1183. In the context of whether the second action involves the same
22 cause of action decided by the original judgment, Arizona courts follow a “same
23 evidence” test meaning that if no additional evidence is needed to prevail in the second
24 action than was needed in the first, and then the second action is barred. Phoenix
25 Newspapers, Inc. v. Department of Corrections, 188 Ariz. 237, 240, 934 P.2d 801, 804
26 (App. 1997).

1 Res judicata also applies to a case which has been dismissed pursuant to a motion
2 to dismiss. Ariz.R.Civ.P. Rule 41(b) regarding involuntary dismissal provides in
3 pertinent part as follows: "Unless the court in its order for dismissal otherwise specifies,
4 a dismissal under this subdivision and any dismissal not provided for in this rule, other
5 than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party
6 under Rule 19, operates as an adjudication upon the merits." See Anguiano v.
7 Transcontinental Bus System, 76 Ariz. 246, 263 P.2d 305 (1953) (involuntary dismissal
8 of first case operated as a ruling "on the merits" under Rule 41(b) and barred second
9 action under res judicata).

10 Here, the Pinal Action was commenced before the Maricopa Action, based upon
11 the same facts, alleged against the same defendants, and consisted of identical causes of
12 action. While the Pinal Action was pending, Plaintiffs filed their Application for
13 Temporary Restraining Order and Complaint in Maricopa County on January 4-5, 2010,
14 then filed a Voluntary Dismissal of the Pinal Action on January 6, 2010. Despite
15 Plaintiffs' games with the parties and the Courts, Judge O'Neil retained jurisdiction to
16 rule in favor of Folks & O'Connor on its pending Motion to Dismiss which was fully
17 briefed before the Maricopa Complaint was filed. Pursuant to the doctrine of res
18 judicata and Rule 41(b), Folks & O'Connor must also be dismissed from this case.

19 **C. Folks & O'Connor has been improperly joined as a party**

20 Dismissal is appropriate pursuant to the Rule 12(b)(6) standards set forth above
21 because Folks & O'Connor is not amenable to suit based on the mere fact that Folks &
22 O'Connor acted solely as substitute trustee to sell the Property. Pursuant to A.R.S. §
23 33-807(E), a trustee named as a defendant solely because of its role in the trustee's sale
24 must be "immediately dismissed" and recover its costs and reasonable attorneys' fees
25 for being improperly joined. Section 33-807(E) reads in full as follows:
26

1 The trustee [of a Deed of Trust] need only be joined as a party in legal
2 actions pertaining to a breach of the trustee's obligations under this chapter
3 or under the deed of trust. Any order of the court entered against he
4 beneficiary is binding upon the trustee with respect to actions that the
5 trustee is authorized to take by the trust deed or by this chapter. *If the
6 trustee is joined as a party in any other action, the trustee is entitled to be
7 immediately dismissed and to recover costs and reasonable attorneys fees
8 from the person joining the trustee.*

9 A.R.S. § 33-807(E) (emphasis added).

10 The quoted language above provides Folks & O'Connor the express and
11 unambiguous right to dismissal. Plaintiffs' causes of action range from breach of
12 contract to fraud but not one asserts a claim against Folks & O'Connor as trustee. A
13 trustee's obligations relate to administration of the trustee's sale. For example, the
14 trustee must give notice of the trustee's sale (A.R.S. § 33-808), execute and deliver the
15 trustee's deed to the purchaser (A.R.S. § 33-811), and dispose of sale proceeds in
16 particular priority (A.R.S. § 33-812). A trustee has no obligations with respect to the
17 loan disclosures that Plaintiff alleges in the Complaint.

18 The Complaint shows that Plaintiffs alone violated A.R.S. § 33-807(E) and that
19 Folks & O'Connor is an impermissible defendant. Accordingly, as contemplated by
20 statute, the Court should grant this Motion to Dismiss and award Folks & O'Connor its
21 fees and costs.

22 **D. Specific causes of action against Folks & O'Connor must be dismissed**

23 **1. Plaintiffs' Complaint fails to comply with Rule 8(a)**

24 Rule 8(a), Ariz.R.Civ.P., requires a complaint to contain a "short and plain
25 statement of the claim showing the pleader is entitled to relief." Plaintiffs' Complaint
26 does not state claims against Folks & O'Connor in compliance with Rule 8(a).
Therefore, Folks & O'Connor should be dismissed from the Maricopa Action for
Plaintiffs' failure to state a claim for which relief may be granted.

1 **2. Count III: Breach of Contract**

2 In an action on a contract, a plaintiff must establish the existence of a contract, its
3 breach, and damages resulting from the breach. *See Thunderbird Metallurgical, Inc. v.*
4 *Arizona Test Lab*, 5 Ariz.App. 48, 423 P.2d 124 (App. 1967). Here, Plaintiffs fail to
5 allege any contract exists between Plaintiffs and Folks & O'Connor, how Folks &
6 O'Connor breached a contract with Plaintiffs and what damages resulted. In sum,
7 Plaintiffs failed to plead any elements of a breach of contract cause of action against
8 Folks & O'Connor and failed to comply with Rule 8(a). Therefore, Count III against
9 Folks & O'Connor must be dismissed.

10 **3. Count IV: Violation of ACFA**

11 Plaintiffs claim all of the defendants violated ACFA by making representations
12 to Plaintiff "with the intent and purpose of inducing Plaintiff into signing an agreement
13 for refinancing and did not provide the appropriate closing documents required by
14 Arizona and Federal Law." Compl. ¶ 167. Count IV fails to specify how Folks &
15 O'Connor did anything fraudulent. Rather, the claim appears to be directed solely at a
16 party inducing Plaintiffs to enter into the Loan which occurred years prior to Folks &
17 O'Connor became the substitute trustee. Indeed, Plaintiffs' ACFA claim fails on its face
18 because it is woefully inadequate on the specifics required under Ariz.R.Civ.P. Rule
19 9(b) which include stating the "who, what, where, when and how" the allegedly
20 fraudulent conduct. *Vess v. Ciba-Geigy Corp., USA*, 317 F.3d 1097, 1106 (9th Cir.
21 2003). Since Count IV of the Complaint fails to comply with Rules 8(a) and 9(b), the
22 Complaint fails to state a fraud claim upon which relief may be granted and must be
23 dismissed as against Folks & O'Connor.

24 **4. Count V: Violation of TILA**

25 Plaintiffs allege in a conclusory fashion that Folks & O'Connor violated TILA.
26 TILA requires certain disclosures be made in connection with extending credit. 15

1 U.S.C. §§ 1601, *et seq.* The term “creditor,” however, is defined by TILA as a “person
2 to whom the debt arising from the consumer credit transaction is *initially payable on*
3 *the face of the evidence of the indebtedness . . .*” 15 U.S.C. § 1602(f)(1), (2) (emphasis
4 added). Folks & O’Connor is not alleged to be the lender or holder of the deed of trust.
5 In addition, there is no allegation or even a suggestion in the Complaint that Folks &
6 O’Connor is a “creditor” or “assignee” within the TILA definition at any time during
7 the Loan transaction. Indeed, as a trustee, Folks & O’Connor is not a “creditor” or
8 “assignee” under TILA. Amendment of the Complaint to assert violations of TILA
9 would be futile. As such, the TILA claim should be dismissed with prejudice. *Castro v.*
10 *Executive Trustee Services, LLC*, Case No. 2:08-CV-02156-PHX-LOA at page 14 (Feb.
11 23, 2009)(foreclosure trustee not “creditor” under HOEPA and TILA).

12 In addition, TILA claims are not valid defenses to a foreclosure action. *See, e.g.,*
13 *Bank of New York v. Conway*, 916 A.2d 130, 139 (Conn. Supp. 2006) (“failure to
14 comply with state and/or federal truth-in-lending requirements has been held not to
15 constitute a legally sufficient special defense in mortgage foreclosure actions”);
16 *Grandway Credit Corp. v. Brown*, 295 So.2d 714, 714 (Fla. Dist. Ct. App. 1974)
17 (“Further, we note that the Truth and Lending statute provides for its own penalties
18 upon violation thereof (15 U.S.C.A. § 1640) and does not affect the validity or
19 enforceability of valid legal obligations”); *First Citizens Bank & Trust Co. of S.C. v.*
20 *Owings*, 259 S.E.2d 747 (Ga. Ct. App. 1989) (“A violation of the Truth in Lending Act
21 would therefore constitute no defense to the foreclosure proceedings.”); *Fleet Real*
22 *Estate Funding Corp. v. Smith*, 530 A.2d 919, 915 (Pa. Super. Ct. 1987) (“Therefore, a
23 set-off for an alleged violation of the Truth-in-Lending Act cannot be asserted as a
24 counterclaim in a mortgage foreclosure action.”). Here, Plaintiff asserted a TILA claim
25 to prevent the foreclosure sale. However, Count V of the Complaint is not supported by
26 TILA.

1 Furthermore, the statute of limitation for TILA claims is one year after a loan
2 closes. 15 U.S.C. § 1640(e). A damages claim under TILA accrues, at the latest, when
3 the loan documents were signed. *Conway*, 916 A.2d at 139; *Meyer v. Ameriquest*
4 *Mortgage Company*, 342 F.3d 899, 902 (9th Cir. 2003); *Katz v. Bank of California*, 640
5 F.2d 1024, 1025 (9th Cir. 1981). Here, the Loan was made in 2007, so Defendant's
6 TILA claim had to be brought by 2008, well before the Complaint was filed. Thus, the
7 TILA claim is barred by 15 U.S.C. § 1640(e). For all of these reasons, Count V against
8 Folks & O'Connor must be dismissed.

9 **5. Count VI: Violation of HOEPA**

10 Count VI of the Complaint asserts a cause of action against all of the defendants
11 for violation of HOEPA. However, HOEPA provides no independent cause of action.
12 HOEPA augments TILA with additional disclosure obligations and substantive
13 requirements for particular high-cost mortgages. See 15 U.S.C. § 1639. Not every loan
14 is subject to HOEPA. 15 U.S.C. § 1602(aa)(1). To state a claim for violation of TILA
15 based on HOEPA's additional disclosure requirements, Plaintiff "must allege facts
16 supporting a conclusion that HOEPA applies to the loan at issue." *Marks v. Chicoine*,
17 2007WL1056779 at *7-8 (N.D. Cal. Apr. 6, 2007) (dismissing HOEPA claim); see also
18 *Emory v. Wells Fargo Bank, N.A.*, Case No. 2:05-CV-01485-PHX-NVW, 2006 U.S.
19 Dist. LEXIS 6817, at *17-18 (D. Ariz. Feb. 16, 2006) (granting summary judgment for
20 defendant where plaintiff failed to adequately allege that his loan was subject to
21 HOEPA). Because Plaintiff does not allege facts supporting the application of HOEPA
22 to the Loan, this claim must be dismissed.

23 Even if the Court were to conclude that HOEPA applied to the Loan, from the
24 face of Plaintiff's Complaint, it appears Plaintiff's action for violation of HOEPA is
25 barred by the statute of limitations. An action for damages under HOEPA must be
26 brought within one year of the violation. 15 U.S.C. § 1640(e); 12 C.F.R. § 226.23;

1 *Wherry v. All California Funding*, 2006 WL 2038495, *2 (N.D. Cal. 2006) (citing *In re*
2 *Community Bank of Northern Virginia*, 418 F.3d 277, 305 (3rd Cir. 2005)). Here, the
3 Complaint was filed more than almost three years after the alleged violations of
4 HOEPA. Furthermore, Plaintiffs offer no clues as to how or why they believe Folks &
5 O'Connor could be liable for any breach of HOEPA by any other defendant. Therefore,
6 the Complaint fails to state a claim against Folks & O'Connor for any violation of
7 HOEPA, and this claim must be dismissed pursuant to Rule 12(b)(6).

8 **6. Count IX: Infliction of Emotional Distress**

9 The elements of a cause of action for intentional infliction of emotional distress
10 ("IIED") are:

11 *[F]irst* the conduct by the defendant must be "extreme" and "outrageous";
12 *second*, the defendant must either intend to cause emotional distress or
13 recklessly disregard the near certainty that such distress will result from his
14 conduct; and *third*, severe emotional distress must indeed occur as a result
15 of defendant's conduct.

16 *Ford v. Revlon, Inc.*, 153 Ariz. 38, 43, 734 P.2d 580, 585 (1987) (citing Restatement
17 (Second) of Torts § 46(1) (1965) (emphasis in original).

18 The trial court determines whether the acts at issue are sufficiently outrageous to
19 state a claim for relief; however if reasonable minds could differ about whether the
20 conduct is sufficiently outrageous, the issue should be decided by a jury. *Mintz v. Bell*
21 *Atlantic Sys. Learning Int'l, Inc.*, 183 Ariz. 550, 554, 905 P.2d 559, 563 (App. 1995).
22 To recover for the this tort, the plaintiff must show that the defendants conduct was "so
23 outrageous in character, and so extreme in degree, as to go beyond all possible bounds
24 of decency, and to be regarded as atrocious and utterly intolerable in a civilized
25 community." *Cluff v. Farmers Ins. Exchange*, 10 Ariz. App. 560, 562, 460 P.2d 666,
26 668 (1969) (quoting Restatement (Second) of Torts § 46 cmt. d).

1 Relevant factors for the court to determining what is "outrageous" include: (i) the
2 defendant's knowledge that plaintiff is particularly susceptible to emotional distress; (ii)
3 whether defendant's conduct was privileged or defendant had a legitimate business
4 purpose for its conduct; and (iii) whether defendant abused a position or relationship
5 with plaintiff. *Mintz*; Restatement (Second) of Torts §§ 46 comments e, f and g (1965).

6 The alleged conduct at issue here is not so outrageous that it goes beyond all
7 bounds of decency. There is no allegation or basis to allege that Plaintiff was
8 susceptible to emotional distress or that Folks & O'Connor was aware that. In addition,
9 as stated by Plaintiffs, Folks & O'Connor acted solely as the substitute trustee for the
10 non-judicial foreclosure. As such, it had a legitimate business purpose for its conduct.
11 Furthermore, there is no allegation or basis to allege that Folks & O'Connor had a
12 special relationship with Plaintiff that it abused. But most important, regardless of the
13 truth of Plaintiff's allegations about Folks & O'Connor, Folks & O'Connor's alleged
14 conduct does not rise to the level of "outrageous" and "extreme" to justify a claim for
15 IIED. *See, e.g. Mintz*, 183 Ariz. at 554-55, 905 P.2d at 563-64 (trial court properly
16 dismissed IIED claim alleging failure to promote motivated by sex discrimination or
17 retaliation—while conduct appeared callous and insensitive, it was not sufficiently
18 extreme and outrageous to state a claim for IIED); *Johnson v. McDonald*, 197 Ariz. 155,
19 3 P.3d 1075 (App. 1999) (where plaintiffs' claimed IIED based on published false
20 information, trial court properly dismissed IIED claim because conduct was not
21 outrageous and extreme). For all of these reasons, Count IX against Folks & O'Connor
22 should be dismissed.

23 **7. Count X: Fraud-Misrepresentation and Conspiracy**

24 Plaintiff's fraud claim is based upon the assertion that all the defendants made
25 certain representations and omissions to Plaintiffs. Compl. ¶ 224. While the Complaint
26

1 states Folks & O'Connor sent Plaintiffs several letters, Plaintiffs fail to identify any
2 such letters or details about the letters.

3 Plaintiffs' fraud claim fails on its face because it is woefully inadequate on the
4 specifics required under Ariz.R.Civ.P. Rule 9(b) which include stating the "who, what,
5 where, when and how" the allegedly fraudulent conduct occurred. *Vess*, 317 F.3d at
6 1106. The Complaint conspicuously fails to specifically state what Folks & O'Connor
7 did, when, where and how such conduct was fraudulent. Since Count X of the
8 Complaint fails to meet the requirement to plead fraud claims with specificity, as
9 mandated under Rule 9(b), the Complaint fails to state a fraud claim upon which relief
10 may be granted and Count X against Folks & O'Connor must be dismissed.

11 **8. Count XII: Violation of UCC²**

12 Arizona law, set forth in its version of the Uniform Commercial Code on
13 negotiable instruments, A.R.S. §§ 47-3301 *et seq.* and 3104, provides that a note
14 qualifying as a negotiable instrument can be enforced by a "holder of the instrument" or
15 a "nonholder in possession of the instrument who has the rights of a holder or a person
16 not in possession of the instrument who is entitled to enforce the instrument. . . ."
17 A.R.S. §§ 47-3301, 47-3104(B) and (E). According to the Complaint, the holder in due
18 course argument is directed toward the original lender, M&I, and its assignee, KCC.
19 However, Count XII fails to comply with Rule 8(a) to afford Folks & O'Connor "fair
20 notice of the nature and basis of the claim" asserted against it. Therefore, Count XII
21 against Folks & O'Connor should be dismissed pursuant to Rule 12(b)(6).

22 WHEREFORE, for all of the foregoing reasons, Folks & O'Connor, PLLC
23 respectfully requests that the Court dismiss all counts of Plaintiffs' Complaint against it
24
25

26 ² Plaintiffs' Complaint skips from Count X to Count XII.

FOLKS & O'CONNOR, PLLC
1850 NORTH CENTRAL AVE, SUITE 1140
PHOENIX, ARIZONA 85004
(602) 262-2265

1 with prejudice pursuant to Ariz.R.C.P. Rule 12(b)(6) and award Folks & O'Connor its
2 attorneys' fees and costs in accordance with A.R.S. § 33-807(E).

3 RESPECTFULLY SUBMITTED this 9th day of February, 2010.

4 **FOLKS & O'CONNOR, PLLC**

5 By /s/ Kathleen A. Weber

6 Larry O. Folks

7 Kathleen A. Weber

8 1850 North Central Ave. #1140

9 Phoenix, AZ 85004

*Attorneys for Defendant Folks &
O'Connor, PLLC*

10 **Electronically filed this 9th**
11 **day of February, 2010 with a copy**
12 **of the foregoing mailed/e-mailed* to:**

12 James McKinney
13 James McKinney
14 618 S. Wickiup Road
15 Apache Junction, AZ 85119
16 *Plaintiffs, pro per*

16 Mark L. Collins, Esq.*
17 Robert M. Savage, Esq.*
18 Gust Rosenfeld P.L.C.
19 One S. Church Avenue, Suite 1900
20 Tucson, AZ 85701-1627
21 *Attorneys for Defendants Kondaur Capital Corporation,*
22 *Kondaur Venture X, LLC, and Kondaur Capital*
23 *Trust Series 2009-3*

21 Laura Sixkiller, Esq.*
22 Greenberg Traurig, LLP
23 2375 East Camelback Road, Suite 700
24 Phoenix, AZ 85016
25 *Attorneys for Defendant M&I Marshall and Ilsley Bank*

25 By /s/ Kasie Grant
26 *An Employee of Folks & O'Connor, PLLC*

EXHIBIT A

AUG 08 2009

JAMES MCKINNEY
618 S. WICKIUP ROAD
APACHE JUNCTION, ARIZONA 85119
(602) 717-7502
PRO PER (SELF REPRESENTED LITIGANT)

IN THE SUPERIOR COURT OF ARIZONA
PINAL COUNTY

JAMES MCKINNEY, an individual,
Plaintiff,

vs.

KONDAUR CAPITAL CORPORATION, a
Delaware Corporation; KONDAUR VENTURE
X, LLC; an Delaware LLC; KONDAUR
CAPITAL TRUST SERIES 2009-3, a Delaware
Statutory Trust; DEUTSCHE BANK TRUST
COMPANY DELAWARE, a Delaware
Corporation; PAULA CHASTAIN, an individual;
PETER BAI, an individual; FOLKS AND
O'CONNOR, PLLC, an Arizona LLC;
SECURITY TITLE AGENCY, an Arizona
Corporation; M & I MARSHALL AND
ILSLEY BANK, a Wisconsin Corporation; JOHN
JONES and JANE DOE JONES, husband and
wife, JOHN DOES and JANE DOES I-X;
ABC CORPORATIONS I-V; and XYZ
PARTNERSHIPS I-V; ABC LLCs I-V, XYZ
TRUSTS I-V;

Defendants.

CASE NO.:

CV2 00903764

COMPLAINT

WILLIAM J. O'NEIL

Breach of Contract

Violation of AZ Consumer Fraud Act

Violation of Truth in Lending Act

15 U.S.C. § 1601 et. seq.

Violation of Home Ownership and Equity
Protection Act, 15 U.S.C. § 1639

Quiet Title A.R.S. § 12-1102 et. seq.

Violation of the Fair Debt Collections
Practices Act

Violation of the Arizona Assignment and
Satisfaction of Mortgage Law
and Invalid Deed of Trust Law
A.R.S. § 33-420 et. seq.

Infliction of Emotional Distress

Fraud – Misrepresentation and Conspiracy
Conversion/Civil Theft

Violation of the Uniform Commercial Code
as defined in A.R.S. § 47-3100
et. seq. and Arizona's Recording
Statute

Civil RICO 18 U.S.C. § 1961-1968

Temporary Restraining Order,
Preliminary and Permanent Injunction

(Ex Parte Emergency Application)

Plaintiff James McKinney against Defendants, alleges as follows:

THE PARTIES

1. Plaintiff JAMES MCKINNEY is a retired individual, living in the State of Arizona at all times relevant to the Complaint. Hereinafter (Plaintiff) or (Consumer)

2. Plaintiff is a "consumer" as defined by TILA, 15 U.S.C. § 1602(h) and Federal Reserve Board Regulation Z, 12 C.F.R. § 226.2(a)(11).

3. Defendant KONDAUR CAPITAL CORPORATION, is a Delaware Corporation doing business in Arizona;

4. Defendant KONDAUR VENTURE X, LLC, is a Delaware LLC doing unregistered business in Arizona;

5. Defendant KONDAUR CAPITAL TRUST SERIES 2009-3, a Delaware Statutory Trust doing unregistered business in Arizona;

6. Defendant DEUTSCHE BANK TRUST COMPANY DELAWARE, is a Delaware Corporation doing business in Arizona;

7. Defendant PAULA CHASTAIN is an individual involved in this transaction as a debt collector.

8. Defendant PETER BAI is an individual involved in this transaction as a debt collector.

9. Defendant FOLKS AND O'CONNOR, PLLC, is an Arizona LLC doing business in Arizona;

10. Defendant SECURITY TITLE AGENCY is an Arizona Corporation doing business in Arizona;

11. Defendant M & I MARSHALL AND ILSLEY BANK, is a Wisconsin Corporation doing business in Arizona;

1 12. Defendants set forth above are hereinafter collectively referred to as
2 "Defendants".

3 13. Defendants are each a "creditor" as defined in the TILA, 15 U.S.C. § 1602(f) and
4 Regulation Z, 12 C.F.R. § 226.2(a)(17)(i).
5

6 14. By their own admission, Defendants are each a "debt collector" pursuant to 15
7 U.S.C. § 1692(a)(6).

8 15. Defendants John Does and Jane Does I-X, ABC Corporations I-V and XYZ
9 Partnerships I-V, and ABC LLCs or other individuals, directors and officers or business
10 entities who may be liable to Plaintiff but whose identities are not presently known will be
11 added, at which time Plaintiff will seek leave to amend the Complaint.
12

13 16. Defendants, either individually or collectively, have caused events to occur in
14 Arizona giving rise to this Complaint. The damages incurred by Plaintiff far exceed the
15 minimal jurisdictional requirements of this Court.

16 **JURISDICTION AND VENUE**

17 17. This Court has jurisdiction over the matters related to the emergency, injunctive,
18 provisional, and equitable relief sought herein, pursuant to the agreements of the parties
19 referenced below.
20

21 18. Venue is proper pursuant to Arizona Revised Statutes § 12-401, et seq.

22 19. The parties herein are subject to certain contractual obligations that are the
23 subject of this litigation.

24 20. This action is brought, for among other purposes, to restrain and enjoin the
25 Defendants, their agents, employees, representatives, lawyers, directors and officers, from
26

1 taking any action to improperly transfer, dispose of, or use the property of Plaintiff to foreclose
2 and gain possession of Plaintiff's Property.

3 21. All exhibits are true and correct and attached hereto and incorporated herein.

4 **GENERAL ALLEGATIONS**

5 **I. The Mortgage**

6 22. Plaintiff is the owner of Property at 618 S. Wickiup, Apache Junction Arizona
7 85219, Tax Parcel No. 103-04-057A4 - (the "Property").

8 23. In February 2007, the Plaintiff financed his free and clear \$170,000 lot at 618 S.
9 Wickiup, Apache Junction, Arizona, with M & I Bank. Although M & I Bank initially labeled
10 the transaction as a "construction loan" at application, M & I added to the loan amount, extra
11 consumer, non-construction funds of approximately \$71,000 later within the transaction. Then
12 at the contract signing on February 7, 2009, when M & I had Plaintiff endorse the paperwork,
13 M & I had labeled the entire transaction as a "Refinance". (Exhibit A). This Refinance
14 wording was stamped on the Deed of Trust and it was recorded as a matter of public record as
15 such. Plaintiff had a free and clear \$170,000 lot, with \$71,000 extra in consumer cash, and
16 thereby assumed, that at least in part, that is what M & I wanted to encumber as a Refinance.
17

18 24. The total loan amount was \$408,458.

19 25. Over a six-month period, Defendant Servicer/Debt Collector M & I Bank has
20 unlawfully refused to clearly answer six separate R.E.S.P.A Qualified Written Requests by the
21 Consumer to clarify this situation. The Consumer therefore has had to assume the Contract is
22 as actually written and publicly-recorded between them; a partial Refinance or whole
23 Refinance transaction; per the stamping of Refinance on the face of the Deed of Trust, and the
24 additional consumer funds he received.
25
26

1 26. Between January to February 2007, M & I Bank violated the Home Ownership
2 and Equity Protection Act, 15 U.S.C. § 1639 (hereinafter H.O.E.P.A.) when qualifying this 71-
3 year-old Plaintiff for \$2,375.00 monthly interest, adjustable, when M & I bank themselves
4 qualified him to pay this amount upon a "\$1 a month" income, as proffered by and written to
5 underwriting by a M & I Bank employee.
6

7 27. M & I Bank clearly knew the requirements of H.O.E.P.A. yet refused to follow it
8 in this transaction, for their profit and gain.

9 28. Since M & I Bank refuses to follow R.E.S.P.A and plainly answer Plaintiff's
10 well-written Qualified Written Requests (QWR), it appears to Plaintiff on information and
11 belief, that M & I Bank has securitized and/or sold this loan for consideration to another
12 unknown party. M & I Bank has repeatedly refused to answer this simple discovery question
13 over six months: Who is the Holder in Due Course/Real Party of Interest to this transaction?
14

15 29. Only a Holder in Due Course can be a Real Party of Interest in any real estate
16 Chain of Title.

17 30. Only a Real Party of Interest can plead and defend in this Court per 16 A.R.S.
18 Rules of Civil Procedure, Rule 17(a).

19 31. This refusal of Defendants to answer Plaintiff's multiple R.E.S.P.A. QWRs has
20 led Plaintiff, upon information and belief, to make in response to this default the following,
21 lack of Real Party of Interest allegations. Simple obedience to R.E.S.P.A by Defendants would
22 have eliminated this unnecessary confusion for Plaintiff and this Court. Such 6-months
23 evasiveness by Defendants' has hindered Plaintiff in creating brevity from proper discovery,
24 and has damaged Plaintiff well beyond the \$2,000 statutory R.E.S.P.A. fines of each and every
25 such violation of non-disclosure. Even if the original Real Party of Interest is found, their
26

1 assignee is not and cannot be a Holder in Due Course, since the assignee knowingly bought the
2 transaction in default, dispute, and dishonor.

3 32. Defendants' evasiveness has caused repeated unnecessary emotional distress
4 upon this retiree Plaintiff as well, as the parties repeatedly threaten non-judicial foreclosure as
5 punishment for asking. Defendants should respond to the R.E.S.P.A. questions first.
6 Defendants should first correct the violations of law first, before initiating any non-judicial
7 administrative foreclosure proceeding.
8

9 33. By January 2009 in a rapidly deteriorating economy, Plaintiff had used up his
10 bank savings from the refinance. Plaintiff has been trying to sell the beautiful property for two
11 years in a severely declining real estate market; to save his original lot equity, and every
12 Holder in Due Course involved.
13

14 34. In the spring of 2009, Plaintiff approached M & I to do a 'workout plan', who
15 refused to do anything reasonable in light of Plaintiff's current income. This especially
16 considering that M & I grossly violated H.O.E.P.A. to begin with. And would normally try to
17 mitigate that.
18

19 35. This violation of H.O.E.P.A. was also a separate state violation of the Arizona
20 Consumer Fraud Act, A.R.S. §§ 44-1522, *et seq.* ("A.C.F.A.").
21

22 36. In May 2009, Plaintiff discovered that within the Refinance portion of this loan,
23 M & I bank had failed to properly disclose the material notices and terms of the loan in
24 Material Breach to Truth-In-Lending, 15 U.S.C. § 1635 *et. al.*
25
26

24 II. TILA Rescission

1 37. 15 U.S.C. § 1635 (f) et. seq. allows Obligor a timely 3-year Notice of Rescission
2 on the Refinance portion of a loan, and when rescinded voids any security interest (Deed of
3 Trust) per § 1635 (b).

4 38. On June 4th, 2009 Plaintiff pursuant to TILA, rescinded the Refinance portion of
5 the transaction by certified mail notice to M & I Bank. (Exhibit B).

6
7 **III. Material Breach Rescission**

8 39. Wholly regardless of Truth-In-Lending Rescission, separately in May 2009,
9 Plaintiff also discovered that M & I Bank failed to properly disclose the material notices, and
10 terms of the loan, violated regulatory laws such as H.O.E.P.A and other rescission precedents...
11 All actions are separate state-related Material Breaches of Arizona's Consumer Fraud Act
12 (A.C.F.A.).

13 40. Severally, Plaintiff rescinded on June 4th, 2009 for these violations as well.
14 (Exhibit B, paragraphs 3-5).

15
16 **IV. Undisclosed Real Party of Interest is not in Court per R.C.P. 17(a)**

17 41. Defendant M & I Bank is known to be heavily involved in undisclosed
18 securitization of borrowers signatures on mortgage loans. Numerous SEC 8-K and 10-K
19 filings of M & I document these securitized, multiple-entity relationships. Defendant M & I
20 Bank has repeated refused to disclose which specific entities filings are involved.

21 42. As a violation of A.C.F.A. against the interests of Plaintiff, on information and
22 belief to date, Defendant M & I failed to disclose the hidden securitization of the borrower's
23 signature, and/or the sale-for consideration of the loan to a third unknown party. This portion
24 of the note contract was not known nor disclosed to Plaintiff, and misrepresented and
25
26

1 concealed by this Defendant. The unknown Real Party of Interest failed to disclose these
2 particulars of the loan as well.

3 43. M & I Bank none-the-less, instead of correcting the misrepresentation, legal, and
4 fatal regulatory breaches they knew about, after being noticed in writing on June 4th, 2009,
5 purposely recorded a non-judicial foreclosure on June 5th, 2009 with Defendant Folks &
6 O'Connor.
7

8 **V. Successor Trustee lacks Chain of Title from Holder in Due Course**

9 44. Successor Trustee, debt collector Folks & O'Connor also well knew about the
10 June 4th, 2009 Rescission, both in writing and verbally, before filing their Notice of Trustee
11 Sale, but went ahead and recorded it anyway in the public records on June 5th, 2009 to preserve
12 their fees, percentages, and their profitable business relationship with M & I Bank.
13

14 45. By proceeding on a previously rescinded loan, Folks & O'Connor breached their
15 Trusteeship. (A courtesy-notice conversation was recorded, pre-filing with them on June 5th,
16 2009).

17 46. Defendant Folks & O'Connor conspired with M & I in Breach, to damage
18 Plaintiff needlessly anyway, by rush the clock on non-judicial foreclosure on a disputed, void
19 security interest.
20

21 47. Defendant Folks & O'Connor lacks Clean Hands.

22 48. Defendant Folks & O'Connor thereby is in Breach.

23 **VI. No Defendant is a Holder in Due Course for Standing per R.C.P. 17(a)**

24 49. After these events, between June 2009 and August, 2009, M & I Bank
25 nonetheless, instead of correcting the mounting misrepresentation, legal, and fatal regulatory
26

1 breaches they knew about, instead sold M & I's *Servicer's* rights to a Delaware corporation
2 called Kondaur Capital Corporation, operating out of California.

3 50. Amazingly, Kondaur Capital Corporation boastfully advertises itself on its
4 internet home page "Welcome to Kondaur Capital Corporation" as 'buying' notes with "*Loans*
5 *with origination fraud*", and "*Loans with regulatory violations*". (Exhibit C). for according
6 to their 4-08-09 Kondaur's newsletter, "Pennies on the Dollar".
7

8 51. Kondaur's CEO Joe Daurio claimed in Kondaur's 'newsletter' in April of 2009:
9 "*....a loan is scratch-and-dent for any of the following three reasons: loan performance - the*
10 *loan is either in default or was previously in default; a loan where a regulation was violated*
11 *in the origination process; or for underwriting reasons that involved fraud.*" (Exhibit D -
12 "Scratch-and-dent Loan Market Offers Outlet", page 2).
13

14 52. Kondaur knowingly, proudly, and purposely, purchases notes throughout the
15 country with regulatory and fraud violations. Kondaur advertises itself as doing the same in
16 the local newspapers such as LA Times and Orange County Register.

17 53. If Kondaur Capital Corporation did in fact actually buy the disputed Note,
18 instead of just servicing it, on information and belief, Plaintiff estimates that Kondaur's
19 purchase was between \$170,000-\$219,000 dollars, perhaps less, based on Kondaur's boasted
20 "*Pennies on the Dollar*" enterprise and advertising, and their foreknowledge of regulatory
21 violations and rescission, dispute, et. al. in this loan. Kondaur and M & I Bank has refused this
22 disclosure to Plaintiff in violation of the R.E.S.P.A. QWR.
23

24 54. Kondaur aids, abets, and furthers M & I's scheme of wiping away any chance to
25 rectify and prosecute regulatory violations, misrepresentations, and breaches; with the use of
26 Kondaur's employees affectionally called 'Combat Loss Mitigations'. These Combat

1 Mitigators repeatedly threaten homeowners with Arizona Non-judicial foreclosure process and
2 short dates; to badger weary homeowners to just ignore the disputed breaches and claims, and
3 take a 'cash settlement' to abandon their home, its equity, and the homeowner's regulatory and
4 F.D.C.P.A. disputes.

5
6 55. Kondaur conspired with M& I Bank and all other Defendants to profit greatly
7 with their 'Pennies on the Dollar' enterprise with M & I Bank and other Defendants.

8 56. Kondaur conspired other Defendants to quickly liquidate the homeowner out of
9 his remaining property, leaving Defendant out on the street, without the security of a lifetime's
10 work of assets.

11 57. To aid this regulatory-violating scheme, Kondaur moralizes to the homeowner
12 during every call to drop their claims and 'go out and rent a place' and 'get on with your life'.

13 58. Although this Plaintiff homeowner has \$170,000 of his retirement earnings tied
14 up in the property, Kondaur repeatedly offered Plaintiff \$5,000 for future 'rent', thereby
15 concealing these fraud and violations of A.C.F.A. and H.O.E.P.A. et. al., insuring they will
16 never be adjudicated in court.

17 59. Kondaur assumed the Servicing and Debt Collection of this Note by letter notice
18 to the Plaintiff dated July 31st, 2009. (Exhibit E).

19 60. On August 18th, 2009, Plaintiff sent this new servicer, Kondaur a QWR
20 requesting information; primarily to document who is actually is the Real Party of Interest, and
21 if that Party is a Holder in Due Course.

22 61. Servicer Kondaur is required by law to answer this QWR *and* as debt collector,
23 not to report any negative credit information during the answer time, usually 60 business days
24 per R.E.S.P.A. and per Kondaur's own letter notice to Plaintiff.
25
26

1 62. Kondaur as of the September 8th 2009 date of this complaint has not answered
2 this QWR, since assuming service of this account.

3 63. Kondaur violates R.E.S.P.A. and thereby A.C.F.A. in negatively reporting and
4 pursuing a disputed non-judicial foreclosure, when they haven't even attempted to answer this
5 QWR yet, to the detriment of Plaintiff.

6 64. Kondaur has not sent an Assignment of Beneficial Interest to Defendant, yet
7 wishes to take his house.

8 65. Upon information and belief, Defendant servicer Kondaur Capital Corporation of
9 Delaware likely does not even own the loan.

10 66. One of the 43 other Kondaur Trusts, entities, LLCs located in Delaware and
11 foreign nations may have 'bought' the loan.

12 67. Kondaur has not answered Plaintiff's QWR questions about any of these entities
13 either.

14 68. Because neither M & I nor Kondaur has answered their separate QWRs, Plaintiff
15 uses the term 'Kondaur' in describing a plethora of 44 entities and their concealed relationships
16 and inter-workings, presently unknown to Plaintiff and this Court. All of the entities appear to
17 have the word "Kondaur" within their name, from a search of the Delaware Corporation
18 Commission. (Exhibit F). Only one out of the 44 entities, Kondaur Capital Corporation, a
19 debt collector/servicer, is registered to do business in Arizona at the Arizona Corporation
20 Commission.

21 69. As of September 8, 2009, a day before their attempted non-judicial foreclosure
22 'at the courthouse entrance' on September 9th, 2009, Kondaur has not sent Plaintiff any copy of
23
24
25
26

1 a Assignment, for Plaintiff to even know who actually is a potential Holder in Due Course of
2 this matter.

3 70. Nonetheless, neither Kondaur nor any of its labyrinth entities can *never* be a
4 Holder in Due Course, even if they paid 'pennies on the dollar' or considerable more
5 consideration for the Note, as they knowingly violated Arizona's Uniform Commercial Code,
6 A.R.S. 47 § 3302, in any purchase from M & I.
7

8 **VII. Holder in Due Course limited by ARS 47 § 3302**

9 71. ARS 47 § 3302 defines a Holder in Due Course as follows: "Holder in due
10 course requires that the 2. The holder took the instrument: (a) For value; (b) **In good faith**; (c)
11 **Without notice that the instrument is overdue or has been dishonored** or that there is an
12 uncured default with respect to payment of another instrument issued as part of the same series;
13 (d) Without notice that the instrument contains an unauthorized signature or has been altered;
14 (e) Without notice of any claim to the instrument described in section 47-3306; and (f)
15 **Without notice that any party has a defense or claim in recoupment described in section**
16 **47-3305, subsection A."**
17

18 72. Blacks Law Dictionary defines a Holder in Due Course as follows: A **holder in**
19 **due course** is a person who takes a negotiable instrument, such as a promissory note, for value
20 **without knowledge** of any apparent defect in the instrument **nor any notice of dishonor.**
21 **(Black's Law Dictionary 2nd Pocket ed. 2001 pg. 322).**
22

23 73. Since April to August 2009, Kondaur knowingly advertised for loans with these
24 same exact known defects of dispute, defect, uncured default, and notice of dishonor, to M & I
25 Bank.
26

1 74. Kondaur, or its assigns, by knowingly 'purchasing' a loan on July 31st, 2009 with
2 known disputes, dishonor, defects, or defenses voids any claim by Kondaur as a Holder in Due
3 Course whatsoever.

4 75. None of the Defendants are a Holder in Due Course.

5 76. Only a Holder in Due Course has standing as a Real Party of Interest in this
6 court.
7

8 **VIII. Defendants lack Good Faith**

9 77. Such a purchase, with purposely known and documented disputes, dishonor,
10 and/or defects, purposely pursued for extraordinary profit, lacks any Good Faith by
11 Defendants.

12 78. This lack of Good Faith by Defendants has caused Plaintiff needless emotional
13 distress.
14

15 79. This lack of Good Faith by Defendants has caused Plaintiff unnecessary
16 damages.

17 **IX. Defendants lack Clean Hands in this Transaction**

18 80. Such a purchase with disputes, dishonor, and/or defects known and documented
19 beforehand, purposely stalked for profit, also lacks Clean Hands by all Defendants.

20 81. Defendants' lack of Clean Hands in this transaction has caused Plaintiff
21 unnecessary and substantial worry and emotional distress.

22 82. Defendants' lack of Clean Hands in this transaction has also caused Plaintiff
23 time-delays and unnecessary damages.

24 83. On or about June 5th, 2009, Folks and O'Connor, as Trustee filed a Notice of
25 Trustee Sale. The sale is scheduled for September 9th, 2008 at 9:05 a.m. at the main entrance
26

1 to the Pinal County Superior Court Building. A true and correct copy of the Notice of Trustee
2 Sale is attached hereto as (Exhibit G) and incorporated herein.

3 84. The Plaintiff has asked for proof of all documentation regarding his original
4 executed loan documents *and assignments*. Despite repeated attempts to M & I Bank for a
5 complete copy of original executed loan documents and assignments were never received by
6 the Plaintiff.
7

8 85. The Plaintiff also asked for proof of all Assignments of his Mortgage and
9 Promissory Note from Defendant Kondaur. Despite numerous attempts to M & I, Kondaur,
10 Folks & O'Connor, et. al., the Plaintiff still has no proof that Kondaur is the Holder in Due
11 Course without dishonor or defect.

12 **X. Defendants' F.D.C.P.A. violations**

13 86. From January 2009 to August 2009, Defendants M & I, Kondaur, Folks and
14 O'Connor, sent the Plaintiff several letters. These letters falls under the Fair Debt Collection
15 Practices Act a Federal Law, which prohibits the use of "abusive, deceptive, and unfair debt
16 collection practices by many debt collectors". 15 U.S.C. §1982.
17

18 87. By their admission, Kondaur, Folk & O'Connor, et. al. each are a "debt
19 collector" pursuant to 15 U.S.C. § 1692(a)(6).
20

21 88. There are numerous violations of the FDCPA in the Defendants'
22 communications. First, the communication must state the name of the actual creditor. The
23 recent letter incorrectly states that the creditor is Kondaur Capital Corporation. Kondaur
24 Capital Corporation is nothing but a Servicer, according to Kondaur's own August 4th, 2009
25 letter. (Exhibit H). Chain of Title is unrecorded, deficient, and illegal.
26

1 89. The July 31st 2009 Kondaur letter states that, the firm will assume the debt to be
2 valid unless you, within thirty days after receipt of this notice, dispute the debt in writing. If
3 there is a dispute in writing, then the firm promises to obtain VERIFICATION OF THE
4 DEBT, the Defendant's representative promises to provide the Plaintiff with THE NAME
5 AND ADDRESS OF THE ORIGINAL CREDITOR, IF IT IS DIFFERENT FROM THE
6 CURRENT CREDITOR.
7

8 90. Despite the Plaintiff's Qualified Written Requests on August 18th, 2009, there
9 has received no written answer from Kondaur or any of the Defendants.

10 91. The Plaintiff's August 17th, 2009 dispute under F.D.C.P.A. has also been
11 ignored. A true and correct copy of the August 17th, 2009 Letter is attached hereto as (Exhibit
12 I) and incorporated herein.
13

14
15 **COUNT I**

16 **BREACH OF CONTRACT**

17 **(All Defendants)**

18 92. Plaintiff realleges and incorporates the foregoing allegations in the Complaint as
19 if fully set forth herein.

20 93. Plaintiff and Defendants entered into a variety of agreements, as set forth more
21 fully above.
22

23 94. Defendants breached all of the agreements.

24 WHEREFORE, based upon the foregoing, Plaintiff's pray for judgment against Defendants, as
25 follows:

26 A. For such actual and consequential damages as may be proved at the time of trial;

1 B. For Plaintiff's taxable costs and reasonable attorneys' fees pursuant to A.R.S. §
2 12-341.01 and the actual documents.

3 C. And for such other and further relief as this Court deems just and equitable.
4

5 **COUNT II**

6 **VIOLATION OF THE ARIZONA CONSUMER FRAUD ACT**

7 **(All Defendants)**

8 95. Plaintiff realleges and incorporates the foregoing allegations in the Complaint as
9 if fully set forth herein.
10

11 96. The Defendants' above-described actions constitute violations of the Arizona
12 Consumer Fraud Act, A.R.S. §§ 44-1521, *et seq.* ("ACFA").

13 97. As a result of the Defendants' violations of the ACFA, the Plaintiff suffered
14 damages in an amount to be determined by this Court.

15 98. Defendants made all the misrepresentations described above with the intent and
16 purpose of inducing Plaintiff into signing an agreement for refinancing and did not provide the
17 appropriate closing documents required by Arizona and Federal law.
18

19 99. The Plaintiff was unaware that the representations described above were false.

20 100. The Plaintiff acted in reasonable reliance on the representations to his detriment.

21 101. The above acts by Defendants constitute consumer fraud in violation of Arizona
22 Consumer Fraud Act, A.R.S. §§44-1521 *et seq.*

23 102. In violating the ACFA, the Defendants acted with an evil mind, intending to
24 injure the Plaintiff or consciously disregarding the substantial risk that their conduct would
25 cause significant harm to the Plaintiff.
26

1 103. The Plaintiff is therefore entitled to recover actual and punitive damages

2 104. WHEREFORE, the Plaintiff prays that this Court award them:

- 3 a. Actual, consequential, incidental, and punitive damages;
- 4 b. Attorneys' fees pursuant to A.R.S. § 12-341.01;
- 5 c. Costs;
- 6 d. All applicable interest; and,
- 7 e. Such other relief as this Court deems just and equitable.

8 **COUNT III**

9 **(TRUTH IN LENDING ACT, 15 U.S.C. § 1601 et seq.)**

10 **(All Defendants)**

11

12

13 105. Plaintiff repeats, re-alleges, and incorporates by reference the foregoing

14 paragraphs.

15 106. Defendants failed and refused to give a copy of their alleged assignment of the

16 Deed of Trust to Plaintiff. Defendants have transferred title of their real property to an

17 unknown to Plaintiff party.

18 107. Defendants materially violated TILA 15 U.S.C. § 1635 and Regulation Z §

19 226.18 which require a creditor to disclose among other things, Annual Percentage Rate

20 calculated using the methods prescribed in the Regulation Z, the amount financed, and the total

21 finance charge.

22 108. Defendants violated the TILA 15 U.S.C. § 1635 and Regulation Z § 226.23

23 which require a creditor to give the notice of right of rescission to the consumer.

24

25

26

1 109. Defendants all have violated TILA 15 U.S.C. § 1635 (b), which require the
2 creditor to void within 20 days, the security interest (Deed of Trust) on the refinance part of the
3 transaction, apparently all of it per the Recorded Deed of Trust document.

4 110. Defendants all have violated TILA 15 U.S.C. § 1635 (b), which require the
5 creditor failed within 20 days to refund the interest and fees paid by Plaintiff, on the refinance
6 part of the transaction, apparently all of it per the Recorded Deed of Trust document.

7 111. Defendants may have violated other provisions of TILA. This allegation will be
8 supplemented after discovery.

9 112. Defendants may have violated other statutes and regulations. This allegation will
10 be supplemented after discovery.

11 113. Had Defendants made the full disclosure as required by TILA, Plaintiff would
12 not have entered into the unconscionable financing arrangement.

13 114. Plaintiff has been harmed and suffered actual damages proximately caused by
14 the conduct of Defendants.

15 WHEREFORE, Plaintiff requests that judgment be entered against Defendants as
16 follows:

17 A. Judgment canceling or rescinding the contract and restoring the parties to the status
18 quo ante;

19 B. Plaintiff be awarded actual damages suffered as a result of Defendants' conduct;

20 C. Judgment for Plaintiff's attorneys' fees and costs;

21 D. Interest on the judgment rendered herein at the maximum lawful rate from the
22 date of its rendition until paid in full; and

23 E. Such other and further relief as this Court deems just and proper.
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COUNT IV

(HOME OWNERSHIP AND EQUITY PROTECTION ACT, 15 U.S.C. § 1639)

(All Defendants)

115. Plaintiff repeat, re-allege and incorporate by reference the foregoing paragraphs.

116. The transaction described above is actually a HOEPA mortgage as defined in 15 U.S.C. § 1602(aa).

117. Defendants violated the disclosure requirements for a HEOPA mortgage as set forth in 15 U.S.C. § 1639(a).

118. Defendants violated 15 U.S.C. § 1639(h) which prohibits a creditor from engaging in a pattern or practice of extending such credit to a consumer based on the consumer's collateral if, considering the consumer's current and expected income, current obligations, and employment status, the consumer will be unable to make the scheduled payments to repay the obligation.

119. Plaintiff has been harmed and suffered actual damages proximately caused by the conduct of Defendants.

120. Defendants knew or should have known about Defendants' failures to comply with the TILA and HOEPA.

121. Defendants are liable for Plaintiff's claims arising out of Defendants' failure to comply with the TILA and HOEPA.

122. WHEREFORE, Plaintiff request that judgment be entered against Defendants as follows:

- 1 A. Judgment canceling or rescinding the contract and restoring the parties to
2 the status quo ante;
3 B. Restore ownership and title of the subject property to Plaintiff;
4 C. Judgment that Plaintiff be awarded actual damages suffered as a result of
5 Defendants' conduct;
6 D. Judgment for Plaintiff's attorneys' fees and costs;
7 E. Such other and further relief as this Court deems just and proper.
8
9

10 **COUNT V**

11 **(QUIET TITLE, A.R.S. § 12-1101, et seq.)**

12 **(All Defendants)**

- 13
14 123. Plaintiff repeat, re-allege and incorporates by reference the foregoing paragraphs.
15 124. Plaintiff is credibly informed and believes that Defendants make some claim
16 adverse to Plaintiff.
17 125. The Defendants allege that they are the holder and owner of the Promissory Note
18 and Deed of Trust on the Property.
19 126. The attached Deed of Trust does not identify servicer Kondaur as the Real Party of
20 Interest.
21 127. There is no reference to the Defendant debt collector Kondaur Capital Corporation
22 in the recorded chain of title or interest.
23 128. No Real Party of Interest is before this court, except Plaintiff.
24 129. No Defendant whatsoever is a Holder in Due Course in the transaction.
25 130. **There is no proof of any Chain of Title by a Holder in Due Course.**
26

- 1 131. Chain of Title as of this date is unrecorded, deficient, and illegal.
- 2 132. WHEREFORE, Plaintiff requests that judgment be entered against Defendants as
- 3 follows:
- 4 b. Judgment establishing Plaintiff's estate as described above;
- 5 c. Judgment barring and forever estopping Defendants from having or
- 6 claiming any right or title to the premises adverse to Plaintiff;
- 7 d. Judgment for Plaintiff's attorneys' fees and costs;
- 8 e. Such other and further relief as this Court deems just and proper.
- 9
- 10

11 **COUNT VII**

12 **VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT**

13 **(All Defendants)**

- 14
- 15 133. Plaintiff repeats, reallege, and incorporates by reference the foregoing paragraphs.
- 16 134. All Defendants, including Kondaur, Folks and O'Connor are debt collectors under
- 17 15 U.S.C. § 1692(a)(6).
- 18 135. The Plaintiff is consumer under the FDCPA.
- 19 136. Defendant Kondaur, sent a letter to Plaintiff on June 31st, 2009, identifying
- 20 themselves as Debt collectors and gave some of the appropriate notices under the
- 21 FDCPA, including allowing the Plaintiff the ability to dispute the debt and request
- 22 verification of the debt.
- 23
- 24 137. On or about August 17th, 2009, the Plaintiff wrote that dispute letter and requested
- 25 verification of the debt.
- 26

1 138. According to the Fair Debt Collection Practices Act, 15 U.S.C. § 809(b), "if the
2 consumer notifies the Debt Collector in writing within the thirty-day period [of
3 receiving the initial communication], that the debt, or any portion thereof is
4 disputed, or that the consumer request the name and address of the original
5 creditor, the DEBT COLLECTOR SHALL CEASE COLLECTION OF THE
6 DEBT OR ANY DISPUTED PORTION THEREOF, UNTIL THE DEBT
7 COLLECTOR OBTAINS VERIFICATION OF THE DEBT...."

8
9 139. Despite the written request, the proper action was never taken by Kondaur, Folks
10 & O'Connor, nor any other Defendants.

11 140. Kondaur has failed and refused to stop collection of the debt.

12 141. Folks and O'Connor has failed and refused to stop collection of the debt.

13 142. M & I Bank has failed and refused to stop collection of the debt.

14 143. All other Defendants corporate and individual have failed and refused to stop
15 collection of the debt.
16

17 144. WHEREFORE, Plaintiff request that judgment be entered against Defendants as
18 follows:

- 19 a. Judgment establishing violation of the Fair Debt Collection Practices Act;
20 b. Judgment for Plaintiff's attorneys' fees and costs;
21 c. Such other and further relief as this Court deems just and proper.
22
23

24 **COUNT VIII**

25 **VIOLATION OF ARIZONA ASSIGNMENT AND SATISFACTION OF**
26 **MORTGAGE LAW AND INVALID DEED OF TRUST**

(All Defendants)

145. Plaintiff repeats, re-alleges, and incorporates by reference the foregoing paragraphs.

146. There is no proof of any assignment, trust, or successor interest by a Holder in Due Course.

147. M & I's Assignment of Trustee and Notice of Trustee Sale was deviously recorded after the TILA § 1635 Rescission causing the source document, the Deed of Trust to void for assignment or Trustee's sale.

148. The loan was in default at the time of the alleged transfer.

149. The loan was rescinded at the time of the alleged transfer and recorded notice.

150. The Deed of Trust is being held after the alleged "sale" to the assignee to the trust.

151. Kondaur Capital Corporation cannot take an equitable assignment of a Deed of Trust because it is not a Holder in Due Course.

152. No other Defendant listed here can take an equitable assignment of a Deed of Trust when it is not a Holder in Due Course.

153. A.R.S. § 33-420(A), states that [a] person purporting to claim an interest in, or a lien or encumbrance against, real property, who causes a document asserting such claim to be recorded in the office of the county recorder, knowing or having reason to know that the document is forged, groundless, contains a material misstatement or false claim or is otherwise invalid is liable to the owner or beneficial title holder of the real property for the sum of not less than five thousand dollars, or for treble the actual damages caused by the recording, whichever is greater, and reasonable attorney fees and costs of the action.

1 154. Arizona Law requires that no estate shall be conveyed unless the conveyance is
2 by an instrument in writing, subscribed and delivered by the party disposing of the estate.

3 155. Every deed or conveyance of real property must be signed by the grantor and
4 must be duly acknowledged before some officer authorized to take acknowledgments.

5 156. A party causing an invalid document to be recorded must know or have reason to
6 know under A.R.S. § 33-420 that the document is invalid.

7 157. It would be impossible, under the circumstances of this and thousand of other
8 cases across the country, in which the Defendants have been judicially estopped from moving
9 forward with Foreclosure or Trustee sales, based upon their inability to show that they are the
10 true beneficiary/owner under the Deed of Trust, to state that the Defendants did not know or
11 have reason to know that the post-rescission Substitution of Trustee and Notice of Trustee Sale
12 were invalid on their face.

13 158. Real Chain of Title as of this date is unrecorded, deficient, and illegal per
14 Defendant Kondaur's own admission letter. (EXHIBIT H).

15 159. Chain of Title is not complete, nor can it ever be due to a lack of a Holder In Due
16 Course. All actions in default and dishonor were knowingly and intentionally entered into by
17 Defendant buyers.

18 WHEREFORE, Plaintiff requests that judgment be entered against Defendants as follows:

- 19 a. Judgment ordering that the Trustee Sale be cancelled immediately;
20 b. Judgment barring and forever estopping Defendants from having or
21 c. Judgment for Plaintiff's attorneys' fees and costs;
22 d. Such other and further relief as this Court deems just and proper.
23 claiming any right or title to the Property adverse to Plaintiff;
24
25
26

1
2 **COUNT IX**

3 **(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)**

4 **(All Defendants)**

5
6 160. Plaintiff repeats, re-alleges, and incorporates by reference the foregoing
7 paragraphs.

8 161. Defendants' actions described above were extreme and outrageous.

9 162. Defendants either intended to cause Plaintiff emotional distress or recklessly
10 disregarded the near certainty that such distress would result from their conduct.

11 163. Plaintiff sustained severe emotional distress as a result of defendants' conduct.

12 164. Defendants conspired to act in a manner, which caused Plaintiff's emotional
13 distress.

14
15 165. Defendants conspired to coerce him into relinquish his claims and his equity.

16 WHEREFORE, Plaintiff request that judgment be entered against Defendants,
17 jointly and severally, as follows:

- 18 a. Judgment that Plaintiff be awarded general damages suffered as a result of
19 Defendants' conduct;
20
21 b. Punitive damages as appropriate to punish and deter Defendants from
22 engaging in similar conduct in the future;
23
24 c. Judgment for Plaintiff's attorneys' fees and costs;
25
26 d. Interest on the judgment rendered herein at the maximum lawful rate from
the date of its rendition until paid in full; and
e. Such other and further relief as this Court deems just and proper.

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COUNT X

FRAUD – MISREPRESENTATION AND CONSPIRACY

(ALL DEFENDANTS)

166. Plaintiff realleges and incorporates by reference all prior paragraphs as if fully set forth herein.

167. Defendants made certain representations and omissions to Plaintiff, including, but not limited to those set forth more fully above.

168. The representations and omissions above, among others, were false.

169. The representations and omissions above, among others, were material, among other things, to Plaintiff.

170. Defendants made these and other representations and omissions with knowledge of their falsity.

171. Defendants made these representations and omissions to induce Plaintiff to enter into business with Plaintiff.

172. Defendants worked together to overwhelm Plaintiff with unconscionable actions, threats, ignoring of known laws, false information, and false letters to weary Plaintiff's resolve to rectify these misrepresentations, frauds, and regulatory violations.

173. Plaintiff was not aware that Defendants' representations and omissions were false.

174. Plaintiff relied on the truth of Defendants' representations and omissions.

175. Plaintiff had no reason to question the truth of Defendants' representations and omissions.

176. Plaintiff has been injured by Defendants' misrepresentations in an amount to be proven at trial.

A. For such actual, consequential and punitive damages as may be proved at the time of trial;

B. For Plaintiff's taxable costs and reasonable attorneys' fees pursuant to A.R.S. § 12-341.01;

C. For costs of collection after judgment; and

D. Such other and further relief as the Court deems just and necessary.

COUNT XI

CONVERSION/CIVIL THEFT

(All Defendants)

177. Plaintiff realleges and incorporates by reference all prior paragraphs as if fully set forth herein.

178. Defendants have intentionally seized, held, or otherwise interfered with Plaintiff's beneficial use of his Property without legal justification or privilege.

179. By their conduct, Defendants have converted the property of Plaintiff for their own use, or they hold the property for the beneficial use of some third party unknown to Plaintiff.

1 180. Defendants' actions have proximately caused Plaintiff to suffer immediate and
2 irreparable harm for the loss of its rightful property, among other elements of economic injury
3 and harm.

4 181. Defendants' actions were deliberate, harmful, wanton and in bad faith, and such
5 conduct supports an award of punitive damages.
6

7 182. Unless Defendants are enjoined from future acts of theft and conversion, Plaintiff
8 will be irreparably harmed.

9 WHEREFORE, based upon the foregoing, Plaintiff prays for judgment against
10 Defendants, as follows:

11 A. For such actual, consequential and punitive damages as may be proved at the
12 time of trial;

13 B. For Plaintiff's taxable costs and reasonable attorneys' fees pursuant to A.R.S.
14 § 12-341.01;

15 C. For costs of collection after judgment.

16 **COUNT XII**

17 **VIOLATION OF THE UNIFORM COMMERCIAL CODE**

18 **AS DEFINED IN A.R.S. §47-3100, §47-3302, et. al. and ARIZONA'S RECORDING**

19 **STATUTE**

20 **(All Defendants)**

21
22
23 183. Plaintiff realleges and incorporates by reference all prior paragraphs as if fully
24 set forth herein.
25
26

184. The promissory note referred to in the Deed of Trust, in the Substitution of Trustee and the Notice of Trustee's Sale, is a negotiable instrument, governed by A.R.S. §47-3104(a), (b) and (e).

185. Plaintiff allege that Kondaur Capital Corporation and other defendants do not meet the definition of a Holder in Due Course under A.R.S. § 47-3302.

186. Defendants lacking Holder in Due Course status are not entitled to enforce the Deed of Trust, and, therefore, cannot legally go forward with the Trustee Sale in any form.

187. Arizona's recording statute requires that all conveyances of real estate be acknowledged and recorded by real parties. A.R.S. § 33-412.

188. The Chain of Title is irrevocably breached by the lack of a good-faith, Holder in Due Course in this transaction.

WHEREFORE, based upon the foregoing, Plaintiff asks for the following relief:

- A. Cancellation of the Trustee Sale;
- B. For such actual, consequential, and punitive damages as may be proved at the time of trial;
- C. For Plaintiff's taxable costs and reasonable attorneys' fees pursuant to A.R.S. § 12-341.01;
- D. For costs of collection after judgment.

COUNT XIII

CIVIL RICO

(All Defendants)

1 189. Plaintiff realleges and incorporates by reference all prior paragraphs as if fully
2 set forth herein.

3 190. Defendants and their DOE agents are "persons" as defined by Statute.

4 191. The conspiracy, the subject of this action, has existed from circa November
5 2006 to the present, with the injuries and damages resulting therefrom being continuing.
6

7 192. Defendants' actions and use of multiple corporate entities, multiple parties, and
8 concerted and predetermined acts and conduct specifically designed to defraud Plaintiff
9 constitutes an "enterprise", with the aim and objective of the enterprise being to perpetrate a
10 fraud upon the Plaintiff through the use of intentional nondisclosure, material
11 misrepresentation, and creation of incomplete and fraudulent loan documents.

12 193. Each of the Defendants is an "enterprise Defendant".

13 194. As a direct and proximate result of the actions of the Defendants, Plaintiff has
14 and continues to suffer damages.
15

16 17 **SUMMARY OF PLAINTIFF'S CAUSES OF ACTION**

18 195. Plaintiff's main causes are as follows.

19 A. Defendants violated several regulatory laws with impunity
20 over a course of years to date

21 B. Defendants attempted to cover up these violations with more
22 violations of R.E.S.P.A. and F.D.C.P.A. law and Arizona's
23 non-judicial Foreclosure process.

24 C. A newer Defendant, Kondaur knew of these regulatory
25 violations, disputes, defects, misrepresentations, and frauds
26

1 upon the Plaintiff. Yet, to aid & abet original Defendant legal
2 dilemma and to profit well from them, went ahead and
3 purchased the Note anyway, so as to profit directly from the
4 reduced principle.

5 D. Defendants admittedly in their June 4th, 2009 letter, have
6 knowledge of actual buyers, Defendants Kondaur Venture X,
7 LLC and Kondaur Capital Trust Series 2009-3 who are not
8 recorded in the Chain of Title on the Deed of Trust.

9 E. Because of break in the Chain of Title, any attempted
10 foreclosure by later Defendants on a faulty assignment is
11 fraud, illegal, conspiratorial, completely destroying Plaintiff's
12 property and peace.

13 F. These later Defendants cannot buy faulty notes, then claim to
14 be Holders in Due Course, per Arizona's U.C.C statutes
15 forbidding it.

16 G. Since none of the Defendants is a Holder in Due Course, none
17 of them are a Real Party of Interest in this transaction, and
18 title need to be permanently quieted against them.
19
20
21

22
23 **Request for Emergency Temporary Restraining Order, Preliminary and Permanent
24 Injunction**

25 196. Plaintiff realleges and incorporates by reference all prior paragraphs as if fully
26 set forth herein.

1 197. Plaintiff has learned that Defendants, their directors, officers, agents,
2 employees, attorneys and other persons in active concert with them or who are acting under
3 their direction, have been transferring and disposing of Plaintiff's property.

4 198. Unless Defendants, their directors, officers, agents, employees, attorneys and
5 any person in active concert with them or who are acting under their direction, are immediately
6 enjoined from making further improper disposition or use of the Property, and going forward
7 with an illegal Trustee Sale, Plaintiff will be irreparably harmed and suffer injury.

8 199. Plaintiff has no adequate remedy at law to prevent further improper transfer, use
9 or other disposition of the Property.

10 WHEREFORE, based upon the foregoing, Plaintiff asks for the following relief:

11 A. For a temporary order and order to show cause against all Defendants, their
12 officers, directors, agents, employees, attorneys and any person in actual concert with them or
13 who are acting under their direction, are immediately and temporarily enjoined for the time
14 period allowed under Rule 65, Ariz. R. Civ. P., from:

15 1. Transferring or otherwise disposing of the Property, as defined in the Verified
16 Complaint;

17 2. Going forward with the Trustee Sale, scheduled for September 9th, 2009; and

18 3. Such other and further relief as this court deems just and necessary; and

19 4. An order disqualifying Folks and O'Connor from representing any party
20 adverse to the Plaintiff, and,

21 5. An order cancelling the current Notice of Trustee Sale and post-rescission
22 Substitution of Trustee involving Folks and O'Connor PLLC.
23
24
25
26

1 B. For a preliminary/permanent injunction against all Defendants, their officers,
2 directors, agents, employees, attorneys and any person in actual concert with them or who are
3 acting under their direction, are immediately and temporarily enjoined for the time period
4 allowed under Rule 65, Ariz. R. Civ. P., from:

- 5
- 6 1. Transferring or otherwise disposing of the Property, as defined in the Verified
7 Complaint;
- 8 2. Going forward with the Trustee Sale, scheduled for September 9th, 2009; and
- 9 3. Such other and further relief as this court deems just and necessary.

10 DATED this 8 day of September 2009.

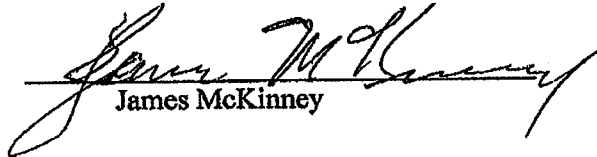
11
12 By: 

13 James McKinney
14 Plaintiff Pro Per
15 618 S. Wickiup Road
16 Apache Junction, Arizona 85119
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VERIFICATION

I, James McKinney, under penalty of perjury, state, that I am a party to the above-entitled litigation, that I have read the attached Verified Complaint and know the contents therein, and the matters and things stated therein, are true and correct to the best of my knowledge, information and belief.

DATED this 8 day of September 2009.


James McKinney

VERIFIED COMPLAINT

EXHIBIT "A"

CHICAGO TITLE INSURANCE COMPANY

Return To:
M&I Bank FSB
ATTN: Final Documentation Dept.
P. O. Box 478
Milwaukee, WI 53201-0478



OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
LAURA DEAN-LYTTLE

DATE/TIME: 02/09/07 1207
FEE: \$28.00
PAGES: 19
FEE NUMBER: 2007-017572

Prepared By:

Lorann J. Ten Haken
Vice President
M&I Bank FSB

REFINANCE

2700571.06 [Space Above This Line For Recording Data]
DEED OF TRUST

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

- (A) "Security Instrument" means this document, which is dated February 07, 2007 together with all Riders to this document.
- (B) "Borrower" is James H McKinney, an unmarried man

Borrower is the trustor under this Security Instrument. Borrower's mailing address is 618 South Wicklup, Apache Junction, AZ 85219

(C) "Lender" is M&I Marshall & Ilsley Bank

Lender is a Corporation
organized and existing under the laws of the State of Wisconsin

xxxx2154

McKinney, J

ARIZONA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

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Page 1 of 15

Page 1 of 15

VMP MORTGAGE FORMS - (800) 521-7281

Lender's mailing address is 770 N Water Street
Milwaukee, WI 53202
Lender is the beneficiary under this Security Instrument.
(D) "Trustee" is CHICAGO TITLE INSURANCE COMPANY

2500 S POWER RD STE 101, MESA, AZ 85209

Trustee's mailing address is

(E) "Note" means the promissory note signed by Borrower and dated February 07, 2007
The Note states that Borrower owes Lender Four Hundred Eight Thousand Four Hundred
Fifty-Eight and 0/100ths Dollars
(U.S. \$408,458.00) plus interest. Borrower has promised to pay this debt in regular Periodic
Payments and to pay the debt in full not later than March 01, 2037
(F) "Property" means the property that is described below under the heading "Transfer of Rights in the
Property."
(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges
due under the Note, and all sums due under this Security Instrument, plus interest.
(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following
Riders are to be executed by Borrower [check box as applicable]:

<input checked="" type="checkbox"/> Adjustable Rate Rider	<input type="checkbox"/> Condominium Rider	<input type="checkbox"/> Second Home Rider
<input type="checkbox"/> Balloon Rider	<input type="checkbox"/> Planned Unit Development Rider	<input type="checkbox"/> 1-4 Family Rider
<input type="checkbox"/> VA Rider	<input type="checkbox"/> Biweekly Payment Rider	<input type="checkbox"/> Other(s) [specify]

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations,
ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final,
non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other
charges that are imposed on Borrower or the Property by a condominium association, homeowners
association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by
check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic
instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit
or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller
machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse
transfers.

(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid
by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i)
damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the
Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the
value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on,
the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the
Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its
implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to

xxxx2154

1010-5 (AZ) (0206)

Page 2 of 15

Initials

McKinney, J

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time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the

County

of

Pinal

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

PARCEL A, OF RECORD OF SURVEY, RECORDED IN BOOK 17 OF SURVEYS, PAGE 041 AND BOOK 17 OF SURVEYS, PAGE 205, RECORDS OF PINAL COUNTY, ARIZONA BEING THE NORTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 1 NORTH, RANGE 8 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, PINAL COUNTY, ARIZONA; EXCEPT ALL THE COAL, OIL, GAS AND OTHER MINERAL DEPOSITS AS RESERVED UNTO THE UNITED STATES OF AMERICA IN THE PATENT TO SAID LAND.

Parcel ID Number: 103-04-05706 (covers more)

which currently has the address of

Parcel 103-04-057A

[Street]

Apache Junction

[City], Arizona 85219-0000 [Zip Code]

("Property Address"):

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items

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pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. **Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. **Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be

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in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the

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lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with

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the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable

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attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

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(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

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12. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. **Joint and Several Liability; Co-signers; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. **Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. **Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

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16. **Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. **Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.

18. **Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. **Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. **Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA

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requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicers and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. **Hazardous Substances.** As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

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NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall give written notice to Trustee of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee shall record a notice of sale in each county in which any part of the Property is located and shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the other persons prescribed by Applicable Law. After the time required by Applicable Law and after publication and posting of the notice of sale, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder for cash at the time and place designated in the notice of sale. Trustee may postpone sale of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it or to the county treasurer of the county in which the sale took place.

23. Release. Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Substitute Trustee. Lender may, for any reason or cause, from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

25. Time of Essence. Time is of the essence in each covenant of this Security Instrument.

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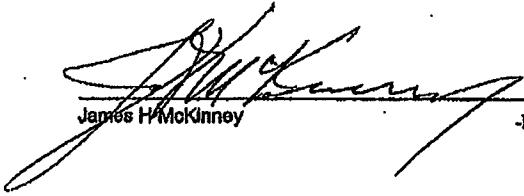
Initials: 

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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

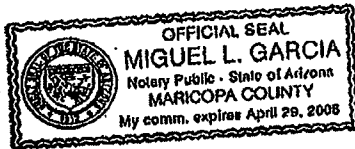
_____	 James H. McKinney (Seal) -Borrower
_____	_____ (Seal) -Borrower
_____ (Seal) -Borrower	_____ (Seal) -Borrower
_____ (Seal) -Borrower	_____ (Seal) -Borrower
_____ (Seal) -Borrower	_____ (Seal) -Borrower

STATE OF Arizona, Maricopa

Maricopa County ss:

The foregoing instrument was acknowledged before me this February 07, 2007
by James H McKinney.

My Commission Expires:



[Signature]
Notary Public

VERIFIED COMPLAINT

EXHIBIT "B"

NOTICE OF LOAN RESCISSION

James McKinney
618 S. Wickiup Road
Apache Junction, AZ 85219
June 4, 2009

M & I Marshall and Ilsley Bank
Post Office Box 3203
Milwaukee, WI 53201-3203

Re: Account #: 00035662154-40000 hereinafter "Loan" dated February 7, 2007

Please Note. I rescind this loan without reservation.

Also for more detail:

I have conducted a reasonable investigation and inquiry into this matter and concluded that Marshall and Ilsley Bank, et. al, the originator(s) of this transaction, failed to provide all material disclosures correctly made as that term is defined and under 15 U.S.C. § 1635(a); Reg. Z §§ 226.23(a) in a form that I may keep. The notices were ineffective, failed to provide the requisite number on the Refinance part of this transaction. This part of the transaction is subject to the unconditional right to rescind within three days which has not yet begun to run due to your failure to provide effective notice of my right to cancel.

I am rescinding this loan for the total of mis-allocated fees, a "material" basis to rescind under Reg. Z § 226.23. Tolerance for Disclosures.

I am rescinding this loan within my extended rescission rights, as noted in *Gaona v. Town & Country Credit*, 324 F.3d 1050, 1053 (8th Cir. 2003); *England v. MG Investments, Inc.*, 93 F. Supp. 2d 718 (S.D. W. Va. 2000); *Williams v. Gelt Financial Corp.*, (In re Williams), 232 B.R. 629 (Bankr. E.D. Pa. 1999) aff'd, 237 B.R. 590 (E.D. Pa. 1999).

I/We rescind as well, for Arizona U.D.A.P. violations by the originating "broker"/banker(s). *Parks v. Marco-Dynamics Inc.* 121 Ariz. 517, 591 P.2d 1005.

R.E.S.P.A. requirements designed to protect the consumer were also violated as more continuing Arizona Unfair and Deceptive Acts and Practices by the originators and/or servicers, to my needless detriment and economic loss. Perhaps in discovery, these U.D.A.P. acts may have been duplicated in other states as well.

I respectfully demand that you void your foreclosure, as you have no security basis on my property after rescission. "Within 20 calendar days after receipt of a notice of rescission, the creditor shall...take any action necessary to reflect the termination of the security interest." - 15 U.S.C. § 1635(b).

Once the Consumer rescinds, the security interest arising by operation of law becomes void automatically. The promissory note is also voided since it is part of the same "transaction," see i.e., 15 U.S.C. § 1635(b) and Reg. Z § 226.23(d)(1).

Sincerely,

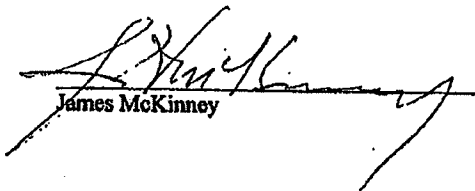

James McKinney

Attachments

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished by certified U.S. Mail on this 4 day of JAN, 2009 to:

Certified Mail Return Receipt # 7007 3020 0002 9337 9316
M & I Marshall and Ilsley Bank
Post Office Box 3203
Milwaukee, WI 53201-3203


James McKinney

VERIFIED COMPLAINT

EXHIBIT "C"



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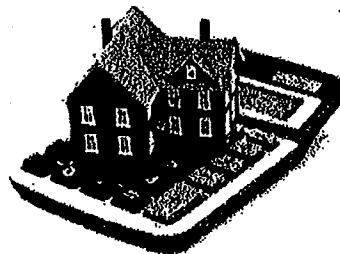
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Welcome to Kondaaur Capital Corporation

Kondaaur Capital Corporation is the only premier purchaser of Scratch & Dent residential mortgage loans. Kondaaur maximizes its bids through its unique management, servicing and liquidation strategies.

Kondaaur will competitively bid any type of one-to-four family residential loans whatsoever, including

- "Story" loans
- Hyper-defaulted loans
- Loans secured by unique properties
- Loans with origination fraud
- Loans with regulatory violations
- Loans rejected for investor purchase



KONDAUR WILL BID ON A SINGLE LOAN ON A ONE TIME BASIS OR ON A POOL OF LOANS. KONDAUR WILL GIVE LOAN LEVEL PRICING ON WHICH A SELLER MAY "CHERRY PICK" LOANS TO SELL.

VERIFIED COMPLAINT

EXHIBIT "D"



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Kondaur News

Kondaur News

Scratch-and-Dent Loan Market Offers Outlet

MBA Newslink Volume 7, Issue 69

By Vijay Palaparty

While **scratch-and-dent** loans accumulate and restrict cash, loan **sellers** now have the option of turning to an emerging market of loan **buyers** who offer liquidation. Sale of such loans provides **refinance** or **resale** opportunities, sometimes also ending in **foreclosure**.

"What drives the scratch and dent market is the seller of the loan who has a need for liquidity; otherwise the seller would not sell the loan at a discount," said Jon Daurio, chairman and CEO of Kondaur Capital Corp., Santa Ana, Calif.

Daurio said a loan is scratch-and-dent for any of the following three reasons: loan **performance** —the loan is either in default or was previously in default; a loan where a **regulation** was violated in the origination process; or for **underwriting** reasons that involve fraud.

"Companies such as Kondaur Capital have entered the market, buying loans at huge discounts with the potential of repackaging and selling the loans.

"The process involves high-touch **due diligence** management," Daurio said. "We might refinance or restructure the loans or we may resell them. If it's a **nonperforming** loan, we may get a **died-in-lieu**. What we do is characterize borrowers as those who have the ability and desire to pay and stay, those who should sell and go, and those who do nothing."

Daurio said that loan attributes play a significant part in purchasing decisions. From a due diligence

perspective, the company conducts a two week to four week review of the loans to verify accuracy.

"In the scratch and dent world, most sellers don't have accurate information and many times the information is off," Daurio said. "Factors such as the status of the loan, unpaid balance and collateral values information result in us adjusting our price. Regardless, sellers should be figuring out what is a fair and reasonable amount for these loans."

As homeownership preservation efforts makes headlines, the scratch-and-dent market could make additional progress. "It's a win-win situation," Daurio said. "In the event that we may have to foreclose on a home, it's usually after we make every other effort to keep the borrower in the home. More often than not, the reason is because we can't reach the borrower at all."

"The incredible magnitude of repurchase obligations has led to a liquidity crisis in the mortgage banking industry," Daurio said. "Loan sellers typically do not have sufficient cash to repurchase the loans nor the ability to borrow sufficient cash. As a result, a scratch-and-dent loan buyers will arrange with the loan seller to buy the loan from the loan buyer at less than par, with the loan seller making up the difference. Such differences can and likely will, in the aggregate, amount to billions of dollars."

MBA Newslink Volume 7, Issue 69, Wednesday, April 09, 2008

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VERIFIED COMPLAINT

EXHIBIT "E"

NOTICE OF ASSIGNMENT, SALE OR TRANSFER OF SERVICING RIGHTS

This notice is to inform you that effective August 16, 2009, the servicing of your mortgage loan is being assigned, sold, or transferred from M&I Marshall & Ilsley Bank, M&I Bank FSB, or Southwest Bank (M&I Bank) to Kondaur Capital Corporation. Servicing is defined as the right to collect payments from you on your mortgage loan.

The assignment, sale or transfer of the servicing of the mortgage loan does not affect any term or condition of the mortgage instruments, other than the terms directly related to the servicing of your loan.

Except in limited circumstances, the law requires that your present Servicer send you this notice at least 15 days before the effective date of transfer or at closing. Your new Servicer must also send you this notice no later than 15 days after this effective date or at closing.

Your present Servicer is M&I Bank. If you have any questions relating to the transfer of servicing from your present Servicer, call M&I Bank toll free at 1-888-464-5463, available 24 Hours.

Your new Servicer will be Kondaur Capital Corporation. The business address for your new Servicer is 1100 Town & Country Suite 1600, Orange, CA 92868. If you have any questions relating to the transfer of servicing to your new Servicer, please call toll free 1-877-737-8866, Monday through Friday from 8:30 a.m. – 5:30 p.m. PST.

The date that your present Servicer will stop accepting payments from you is August 16, 2009. Effective August 17, 2009, your new Servicer will start accepting payments from you. Begin making your checks payable to Kondaur Capital Corporation and mail your payment to PO Box 1449, Orange, CA 92856-1449.

You should also be aware of the following information, which is set out in more detail in Section 6 of the Real Estate Settlement Procedures Act (RESPA) (12 USC 2605):

During the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old Servicer before its due date may not be treated by the new Servicer as late, and a late fee may not be imposed on you.

Section 6 of RESPA (12 USC 2605) gives you certain consumer rights, if you send a "qualified written request" to your loan Servicer concerning the servicing of your loan, your Servicer must provide you with a written acknowledgment within 20 business days of receipt of your request. A "qualified written request" is a written correspondence, other than notice on a payment coupon or other payment medium supplied by the Servicer, which includes your name and account number, and your reasons for the request. Send written requests to 1100 Town & Country Rd, Suite 1600, Orange, CA 92868.

Not later than 60 business days after receiving your request, your Servicer must make any appropriate corrections to your account, and must provide you with a written clarification regarding any dispute. During the 60-business-day period, your Servicer may not provide information to a consumer reporting agency concerning any overdue payment related to such period or qualified written request, however, this does not prevent the Servicer from initiating foreclosure if proper grounds exist under the mortgage documents.

A business day is a day on which the offices of the business entity are open to the public for carrying on substantially all of its business functions.

Section 6 of RESPA also provides for damages and costs for individuals or classes of individuals in circumstances where Servicers are shown to have violated the requirements of that Section. You should seek legal advice if you believe your rights have been violated.

M&I Bank	July 31, 2009
Present Servicer	Date
Kondaur Capital Corporation	July 31, 2009
Future Servicer	Date

VERIFIED COMPLAINT

EXHIBIT "F"

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Frequently Asked Questions**General Information Name Search****44 Matches found**

* Required Field

* Entity Name: KONDAUR

or File Number:

This field is not case sensitive.

Search

FILE NUMBER	ENTITY NAME
4376689	KONDAUR CAPITAL CORPORATION
4205358	KONDAUR CAPITAL, LLC
4626979	KONDAUR CAPITAL TRUST SERIES 2008-1
4636981	KONDAUR CAPITAL TRUST SERIES 2008-2
4638978	KONDAUR CAPITAL TRUST SERIES 2008-3
4687885	KONDAUR CAPITAL TRUST SERIES 2009-1
4715615	KONDAUR CAPITAL TRUST SERIES 2009-3
4547551	KONDAUR VENTURES II B1, L.L.C.
4566453	KONDAUR VENTURES III B1, L.L.C.
4566448	KONDAUR VENTURES III, L.L.C.
4566455	KONDAUR VENTURES III OFFSHORE, L.L.C.
4566449	KONDAUR VENTURES III OFFSHORE REO 1, L.L.C.
4545703	KONDAUR VENTURES II, L.L.C.
4549515	KONDAUR VENTURES II OFFSHORE, L.L.C.
4558190	KONDAUR VENTURES II OFFSHORE REO 1, L.L.C.
4530019	KONDAUR VENTURES I, LLC

4587546	<u>KONDAUR VENTURES IV B1, L.L.C.</u>
4587545	<u>KONDAUR VENTURES IV, L.L.C.</u>
4587547	<u>KONDAUR VENTURES IV OFFSHORE, L.L.C.</u>
4587548	<u>KONDAUR VENTURES IV OFFSHORE REO 1, L.L.C.</u>
4695761	<u>KONDAUR VENTURES IX B1, L.L.C.</u>
4695758	<u>KONDAUR VENTURES IX, L.L.C.</u>
4695769	<u>KONDAUR VENTURES IX OFFSHORE, L.L.C.</u>
4695772	<u>KONDAUR VENTURES IX OFFSHORE REO 1, L.L.C.</u>
4612012	<u>KONDAUR VENTURES V B1, L.L.C.</u>
4634842	<u>KONDAUR VENTURES VI B1, L.L.C.</u>
4637111	<u>KONDAUR VENTURES VII B1, L.L.C.</u>
4682513	<u>KONDAUR VENTURES VIII B1, L.L.C.</u>
4682510	<u>KONDAUR VENTURES VIII, L.L.C.</u>
4682515	<u>KONDAUR VENTURES VIII OFFSHORE, L.L.C.</u>
4682517	<u>KONDAUR VENTURES VIII OFFSHORE REO 1, L.L.C.</u>
4637109	<u>KONDAUR VENTURES VII, L.L.C.</u>
4637115	<u>KONDAUR VENTURES VII OFFSHORE, L.L.C.</u>
4637116	<u>KONDAUR VENTURES VII OFFSHORE REO 1, L.L.C.</u>
4634838	<u>KONDAUR VENTURES VI, L.L.C.</u>
4634846	<u>KONDAUR VENTURES VI OFFSHORE, L.L.C.</u>
4634851	<u>KONDAUR VENTURES VI OFFSHORE REO 1, L.L.C.</u>
4611696	<u>KONDAUR VENTURES V, L.L.C.</u>
4611697	<u>KONDAUR VENTURES V OFFSHORE, L.L.C.</u>
4611699	<u>KONDAUR VENTURES V OFFSHORE REO 1, L.L.C.</u>
4711830	<u>KONDAUR VENTURES X B1, L.L.C.</u>
4711826	<u>KONDAUR VENTURES X, L.L.C.</u>
4711834	<u>KONDAUR VENTURES X OFFSHORE, L.L.C.</u>
4711838	<u>KONDAUR VENTURES X OFFSHORE REO 1, L.L.C.</u>

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VERIFIED COMPLAINT

EXHIBIT "G"

August 4, 2009

JAMES MCKINNEY
618 S Wickiup Rd
Apache Junction, AZ 85219

NOTIFICATION OF ASSIGNMENT, SALE OR TRANSFER OF YOUR MORTGAGE LOAN

RE: Loan Number – 109147
Property Address: 618 S Wickiup Rd
Apache Junction, AZ 85219

The purpose of this notice is to inform you that, effective August 17 2009, your mortgage loan was assigned, sold or transferred to Kondaur Venture X, LLC and contemporaneously assigned, sold or transferred to Kondaur Capital Trust Series 2009-3. The assignment, sale, or transfer of your loan to Kondaur Venture X, Inc., and contemporaneous assignment, sale or transfer to Kondaur Capital Trust Series 2009-3, does not affect any term or condition of the Mortgage, Deed of Trust or Note and this notice requires no action on your part. If you need to contact these entities, they can be reached at:

Kondaur Venture X, LLC or Kondaur Capital Trust Series 2009-3
c/o Kondaur Capital Corporation
1100 Town & Country Road, Suite 1600
Orange, CA 92868
Attention: Jon Daurio, CEO
1-888-566-3287, ext. 2052

The above-described transfers of ownership were not recorded. However, there has been an assignment recorded, or we intend to record an assignment, into the name of the servicer of your loan, Kondaur Capital Corporation. Said recordation was, or is intended to be, in Pinal County, AZ.

If you have any questions relating to the transfers of ownership of your mortgage loan, please contact Kondaur Capital Corporation, the servicer of your mortgage loan and the designated agent for Kondaur Capital Trust Series 2009-3, at the following telephone number, and/or email address:

KONDAUR CAPITAL CORPORATION
Attention: Mike Perry
Toll-free: (877) 737-8866, ext. 2068
mperry@kondaur.com

It is important that you send your monthly payments directly to Kondaur Capital Corporation, the servicer of your mortgage, at the address on your mortgage statement.

Checks should be made payable to Kondaur Capital Corporation. All correspondence and inquiries concerning your mortgage loan should be addressed to Kondaur Capital Corporation.

VERIFIED COMPLAINT

EXHIBIT "H"

SECURITY TITLE AGENCY

When recorded return to:

Larry O. Folks
FOLKS & O'CONNOR, PLLC
Suite 1140
1850 N. Central Ave.
Phoenix, AZ 85004



**OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
LAURA DEAN-LYTL**

DATE/TIME: 06/05/09 1611
FEE: \$14.00
PAGES: 3
FEE NUMBER: 2009-057607

NOTICE OF TRUSTEE'S SALE

14-83463

Trustee Sale No: McKinney, James H
Loan Number: 098-00035662154-40000

Recorded: June 5, 2009

The following legally described trust property will be sold, pursuant to the power of sale under that certain Trust Deed dated February 7, 2007, and recorded on February 9, 2007 in Instrument Number 2007-017572, Records of Pinal County, Arizona at public auction to the highest bidder at the main entrance to the Pinal County Superior Court Building, 971 North Jason Lopez Circle, Bldg A, Florence, AZ on September 9, 2009 at 9:05AM of said day:

LEGAL:

Parcel A, of record of survey, recorded in book 17 of surveys, page 041 and book 17 of surveys, page 205, records of Pinal County, Arizona being the north half of the northeast quarter of the southeast quarter of the southwest quarter of the southwest quarter of section 22, township 1 north, range 8 east, of the Gila and Salt River Base and Meridian, Pinal County, Arizona; except all the coal, oil, gas and other mineral deposits as reserved unto the United States of America in the patent to said land.

The street address is purported to be:
Parcel # 103-04-057A
Apache Junction, AZ 85219

Tax Parcel Number 103-04-057A
Original Principal Balance \$ 408,458.00

NAME AND ADDRESS OF

Original Trustor

James H McKinney, an unmarried man
618 South Wicklup
Apache Junction, AZ 85219

Current Owner

James H McKinney, an unmarried man
618 South Wicklup
Apache Junction, AZ 85219

Beneficiary

M & I Marshall & Isley Bank
770 North Water Street
Milwaukee, WI 53202

Current Trustee
Larry O. Folks
Suite 1140
1850 N. Central Ave.
Phoenix, AZ 85004

Telephone Number: 602-262-2265
Sales Line: 480-507-1135

Dated June 3, 2009

Signature of Trustee


Larry O. Folks

MANNER OF TRUSTEE QUALIFICATION
a member of the State Bar of Arizona, as required by
A.R.S. Sec. 33-803, Subsection A(2)
Trustee's Regulator: State Bar of Arizona

STATE OF ARIZONA

County of MARICOPA

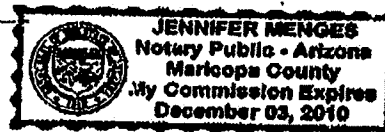
} ss.

On June 5, 2009, before me, the undersigned notary public, personally appeared Larry O. Folks, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument

WITNESS my hand and official seal.

My commission expires December 3, 2010


Jennifer Menges
NOTARY PUBLIC



All persons whose interest in the Trust Property is subordinate in priority to that of the above described Deed of Trust may be subject to having such subordinate interest terminated by this Trustee's Sale

The notice contained in this Statement is or may be an attempt to collect a debt, and any information obtained will be used for that purpose.

STATEMENT OF BREACH OR NON-PERFORMANCE

The following Breach or Non-Performance of that certain Deed of Trust recorded under the Trust Deed executed by James H McKinney, an unmarried man, as Trustor(s), in which Chicago Title Insurance Company 2500 S Power Rd STE 101 Mesa, AZ 85209 is named as Trustee, which Trust Deed dated February 7, 2007, and recorded in Pinal County, Arizona, in Instrument Number 2007-017572, (the "Deed of Trust") has occurred.

Failure to make the monthly installment due in the amount of \$2375.76, which became due on 2/01/2009 and all subsequent installments thereafter, along with all costs and fees, together with all other defaults under the Deed of Trust.

The beneficiary in said Deed of Trust has elected to sell or cause to be sold the property described in said Deed of Trust at a Trustee's Sale in compliance with A.R.S. 33-801 ET. SEQ.

The amount of the unpaid principal balance ("the debt") is \$407,272.56 plus interest accruing from the date last paid. The creditor to whom the debt is paid is M & I Marshall & Ilsley Bank. Unless the Debtor notifies the Trustee who is mailing this Notice within 30 days of receiving this notice that they dispute the validity of the debt, or any portion thereof, the Trustee will assume the debt is valid. If the Debtor notifies the trustee in writing within the 30 day period that the debt, or any portion thereof is disputed, the Trustee will obtain a verification of the debt and a copy of such verification will be mailed to the Debtor. If the Creditor named above is not the original Creditor, and if the Debtor makes a written request to the Trustee within 30 days from receipt of this notice, the name and address of the original Creditor will be mailed to the Debtor by this office.

M & I Marshall & Ilsley Bank

By Larry O. Folks

Attorney at Law

By Special Power of Attorney
Pursuant to A.R.S. 33-809(C)

IF YOUR INTEREST IN THE SUBJECT PROPERTY IS JUNIOR AND INFERIOR TO THAT OF THE TRUST DEED BEING FORECLOSED, YOUR INTEREST IN THE TRUST PROPERTY WILL BE TERMINATED BY THE TRUSTEE'S SALE

TS No. McKinney, James H
Loan No. 098-00035662154-40000

VERIFIED COMPLAINT

EXHIBIT "I"

WRITTEN NOTICE OF LOAN DISPUTE

James McKinney
618 S. Wickiup Road
Apache Junction, AZ 85219
August 17th, 2009

Kondaur Capital Corporation
1100 Town & Country, Suite 1600
Orange, CA 92868

Re: Account #: **109147**, formerly #35662154 hereinafter "Loan" dated February 7, 2007.
Fair Credit Reporting Act (aka FCRA), at 15 U.S.C. § 1681 et seq.
Fair Debt Collection Practices Act (aka FDCPA), 15 U.S.C. § 1692 et seq.
Real Estate Settlement Procedures Act, (known as "RESPA"), 12 U.S.C. § 2601-2617.

Dear Kondaur Capital Corporation:

We received your introductory letter & notices dated August 4, 2009. Thank you.

I am responding to your '30 day' legal letter notice, to notify you I have been disputing this contract since June 4th, 2009 as you know, for the following reasons:

I conducted a reasonable investigation and inquiry into this matter and concluded that Marshall and Ilsley Bank, et. al, the originator(s) of this transaction, failed to provide all material disclosures correctly made as that term is defined and under 15 U.S.C. § 1635(a); Reg. Z §§ 226.23(a) in a form that I may keep. The notices were ineffective, failed to provide the requisite number on the refinance part of this transaction. M & I Bank itself labeled this transaction on the Deed of Trust as a "Refinance". Why should I not believe them? This part of the transaction is subject to the unconditional right to T.I.L.A. rescind within three years from three years § 1635(b). The remainder if any of the transaction, is subject to U.D.A.P. and other extended Rescission rights as clarified below.

I am also rescinding this loan for the total of mis-allocated fees, a "material" basis to rescind under Reg. Z § 226.23. Tolerance for Disclosures.

I am rescinding this loan within my **extended rescission rights**, as noted in *Gaona v. Town & Country Credit*, 324 F.3d 1050, 1053 (8th Cir. 2003); *England v. MG Investments, Inc.*, 93 F. Supp. 2d 718 (S.D. W. Va. 2000); *Williams v. Gelt Financial Corp.*, (In re Williams), 232 B.R. 629 (Bankr. E.D. Pa. 1999) aff'd, 237 B.R. 590 (E.D. Pa. 1999).

I/We rescind as well, for Arizona U.D.A.P. violations by the originating "broker"/banker(s).
Parks v. Marco-Dynamics Inc. 121 Ariz. 517, 591 P.2d 1005.

R.E.S.P.A. requirements designed to protect the consumer were also violated as more continuing Arizona Unfair and Deceptive Acts and Practices (UDAP) by the originators and/or servicers, to my needless detriment and economic loss. Perhaps in discovery, these UDAP acts may have been duplicated in other states as well.

M & I has failed to obey 15 U.S.C. § 1635(b), which states: "*Within 20 calendar days after receipt of a notice of rescission, the creditor shall...take any action necessary to reflect the termination of the security interest.*" They are to affirmably initiate court proceedings within those 20 days if they dispute the rescission, which they failed to do.

Once the Consumer rescinds, **the security interest arising by operation of law becomes void automatically.** The promissory note is also voided since it is part of the same "transaction," see i.e., 15 U.S.C. § 1635(b) and Reg. Z § 226.23(d)(1).

This Note - months *before* your August 2009 purchase, and before your August 2009 servicing transfer, was Rescinded without reservation. therefore pursuant to FCRA et. al., **I dispute** any credit reporting on it, as its security interest and terms are utterly void by law, both TILA and UDAP, ab initio.

M & I bank as Servicer and Originator repeatedly failed to follow R.E.S.P.A., T.I.L.A. et. al., and now owes to me against this account:

1. Statutory damages of no less than \$2,000 each for the disclosure violations as provided under 15 U.S.C. § 1640;
2. Statutory damages of \$2,000 for Defendants' failure to respond properly to Plaintiffs' June 4th, 2009 rescission notice;
3. Statutory damages of \$2,000 for **each** of Defendants' **five** separate failures to respond properly to Plaintiffs' five ignored specific 12 USC § 2605 Qualified Written Requests for discovery and loan verification.
4. Statutory damages as provided by state law and the Arizona Consumer Fraud Act (AFCA).

These items' non-payment by M & I, due to their mitigating amounts are disputed as well.

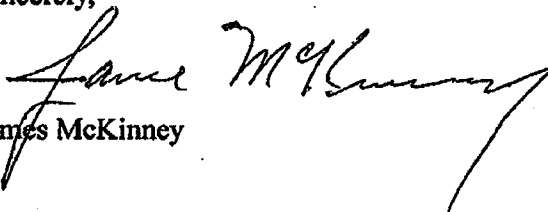
I respectfully demand that you void M & I's illegally initiated foreclosure, as per § 1635(b) you have no security basis on my property after rescission of the refinance section of this loan. The voided Deed of Trust contracted "Refinance" when I was asked to sign it as on the face of the document itself.

Severally, for each of these reasons, this loan is in dispute. In accordance to paragraph 5 of your letter, I am disputing each of these issues within 30 days, in writing.

In violation of FCRA and FDCPA, and in violation of §1635(b), the disputed security-interest based Trustee Sale, was post-rescission **publicly recorded** intentionally by M & I, further damaging my credit. As the new Servicer, please correct this.

I am damaged daily until these are all corrected. Any negative reporting on it by you while it is in dispute will further damage me. Since you are responsible for this account, **please correct these many items immediately.** Thank you.

Sincerely,


James McKinney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished by U.S. Mail on this 18 day of Aug, 2009 to:

Express US Mail #EQ 568815360 US
Kondaur Capital Corporation
1100 Town & Country, Suite 1600
Orange, CA 92868

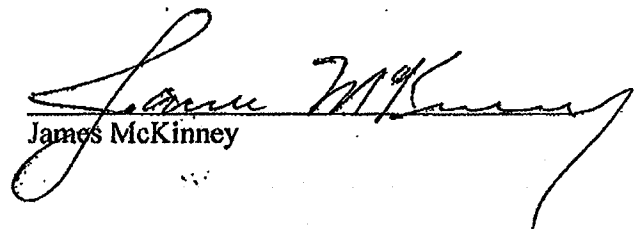

James McKinney

EXHIBIT B

IN THE SUPERIOR COURT

PINAL COUNTY, STATE OF ARIZONA

Date: 01/26/2010

THE HON WILLIAM J O'NEIL

Division: 1

By Judicial Assistant: JUDY GOSSMAN

JAMES MCKINNEY

Plaintiff(s),

vs.

KONDAUR CAPITAL CORPORATION, et al.,

Defendant(s).

) **S1100CV200903764**

) **NOTICE**

) **RULING ON MOTIONS/ISSUES**

A Motion to Dismiss was submitted by Folks & O'Connor PLLC. Plaintiff has not addressed any of the issues raised within the Motion to Dismiss even assuming the allegations contained within the Complaint were true and there has been no sufficient factual allegations to undergird the same. The Court would be required to grant the motion. Now, therefore,

IT IS ORDERED granting the Motion to Dismiss.

Plaintiff attempts to file a Dismissal Without Prejudice based upon incorrect venue for a majority of witnesses and a request to hold this dismissal in abeyance was likewise submitted. Further, as Plaintiff has now apparently attempted to dismiss this action and then reinstituted it in a different county, this Court retains jurisdiction for the order of the payment of costs incurred by the Defendants. However, this Court has not deemed the Motions to Dismiss as summary judgment motions and does deem the matters otherwise dismissed as authorized by Rule 41(A).

Mailed/e-mailed distributed copy: 01/26/2010

**JAMES MCKINNEY
618 S WICKIUP RD
APACHE JUNCTION AZ 85119**

Filed on 1/26/2010 3:17:58 PM

MARK L COLLINS

LARRY O FOLKS

EXHIBIT 12

RECEIVED
MAR 17 2010
LES

JAMES MCKINNEY
618 S. WICKIUP ROAD
APACHE JUNCTION, ARIZONA 85119
(602) 717-7502
PROPRIA PERSONA

IN THE SUPERIOR COURT OF ARIZONA
PINAL COUNTY

JAMES MCKINNEY, an individual,
JAMES MCKINNEY, an individual,
Real Parties in Interest

Plaintiffs,

vs.

KONDAUR CAPITAL CORPORATION, a
Delaware Corporation; KONDAUR VENTURE
X, LLC; an Delaware LLC; KONDAUR
CAPITAL TRUST SERIES 2009-3, a Delaware
Statutory Trust; DEUTSCHE BANK TRUST
COMPANY DELAWARE, a Delaware
Corporation; PAULA CHASTAIN, an
individual; PETER BAI, an individual; FOLKS
AND O'CONNOR, PLLC, an Arizona LLC;
SECURITY TITLE AGENCY, an Arizona
Corporation; M & I MARSHALL AND
ILSLEY BANK, a Wisconsin Corporation;
JENNIFER MENGES; an individual; JOHN
JONES and JANE DOE JONES, husband and
wife, JOHN DOES and JANE DOES I-X; ABC
CORPORATIONS I-V; and XYZ
PARTNERSHIPS I-V; ABC LLCS I-V, XYZ
TRUSTS I-V;

Defendants.

CASE NO.: CV2010-00970

**PLAINTIFFS' RESPONSE TO
DEFENDANT FOLKS & O'CONNOR
MOTION TO DISMISS, ALL JOINDERS,
and REQUEST FOR ATTORNEY'S FEES
AND SANCTIONS**

**REQUEST FOR TIME FOR DISCOVERY
PURSUANT TO
ARCP 56(f)**

Plaintiffs are the victim of a predatory loan, with Ponzi fraud and securitization fraud. Plaintiffs have a priority Motion to Determine Standing before this Court. Without waiving it, Plaintiffs assert that they have stated facts and submitted evidence

1 supporting all of his claims. Plaintiffs urge this Court to deny Defendants Folks &
2 O'Connor's Motion to Dismiss and order it to answer because the Complaint is properly
3 pled. Should the Court determine the Complaint lacks specificity, the McKinneys
4 reasonably request an opportunity conduct discovery pursuant to Rule 56(f) ARCP and to
5 further amend their complaint rather than dismissal.
6

7 MEMORANDUM OF POINTS AND AUTHORITIES

8 I. SUMMARY OF THE ARGUMENT

9
10 Plaintiffs' claims stem from deception at the inception and entire duration of
11 a predatory loan on their retirement home culminating in an illegal non-
12 judicial foreclosure based upon fraudulent documents fueled by arrogance
13 and greed. Plaintiffs sue to get to the truth regarding the foreclosure and sale
14 of their dream home they designed and built. Under the non-judicial statutes,
15 the recordings and assignments are defective both substantively (entities are
and signators are not who they say they are) and procedurally violating due
process, disclosure laws and the laws of equity.

16 If Defendant's arguments are accepted, *at the pleading stage*, then any person
17 could foreclose on any other person, simply by claiming to be the Power of
18 Attorney to a deed of trust appointing himself as trustee to foreclose,
19 validating the debt as one with personal knowledge of the accounting of the
20 loan (for Kondaur Capital) and then arranging a buyer to dispossess the true
owner without any recourse. It is contrary to Arizona law and public policy
to green-light fraudulent activity and illegal foreclosures.

21 Kondaur, M & I Bank, and Folks & O'Connor claim protection under the
22 statute, but the Arizona legislature did not intend to grant an absolute right
23 to lie, cheat and steal. Folks & O'Connor knew of the unrecorded transfers
24 and the title issues prior to the sale, but claimed the beneficiary "never
25 changed." By failing to disclose their authority to act and concealing the true
26 parties and illegal nature of the transactions while refusing the reasonable
requests for information, and facilitating the sale Folks & O'Connor became
a key player in the unlawful seizure of the McKinneys' home. If they had the

1 legal right to act why not disclose it prior to the sale or even now, Folks &
2 O'Connor's Motion to Dismiss is nothing but an impermissible and
3 premature Motion for Summary Judgment, unsupported by facts or law.
4 Folks & O'Connor's motion to dismiss should be denied, and they should be
5 ordered to answer.

6 **II. MOTIONS TO DISMISS ARE NOT FAVORED**

7 Dismissal is proper under Rule 12(b)(6) of the ARCP where there is either a "lack of a
8 cognizable legal theory" or "the absence of sufficient facts alleged under a cognizable legal
9 theory."¹

11 **III. DISCOVERY OF DEFENDANTS' HIDDEN ACTIONS FOR COMPLAINT**

12 Defendants have gone out of their way to keep Plaintiffs from Discovery regarding
13 the true nature and (17a) Real Party in Interest of this Note. Nonetheless, Plaintiff has
14 made substantial *partial* discoveries as to the nature of the transaction. Therefore, this
15 complaint has several causes of action unknown to Plaintiff in his September 2009
16 complaint. This January 2010 complaint is well pled and researched. Additional
17 Discovery is demanded by Plaintiffs to flesh out the 'rest of the story'. Defendants have
18 had something to hide from Plaintiffs, after collectively they refused actual responses to 7
19 different statutory R.E.S.P.A administrative requests from Plaintiff from March 16th,
20 2009 to present.

21 Silence can only be equated with fraud where there is a legal or moral
22 duty to speak, or where an inquiry left unanswered would be
23 intentionally misleading - *U.S. v. Tweel*, 550 F.2d 297, 299 (5th Cir.

24
25
26 ¹ *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990).

1 1977). Notification of legal responsibility is "the first essential of due
2 process of law." *Connally v. General Construction Co.*, 269 U.S. 385, at
3 391.

4 **IV. WRONGFUL FORECLOSURE**

5 To determine the validity of the trustee's exercise of the power of sale set forth in the
6 deed of trust, one must necessarily study the note and its ownership, and whether the note has
7 actually been defaulted to its Real Party in Interest.
8

9 Arizona recognizes the tort of wrongful foreclosure:

10 Furthermore, other jurisdictions have recognized this tort, and based on the undisputed
11 facts of this matter, *the Court finds it appropriate to join those jurisdictions and hold*
12 *the Defendant liable for wrongfully foreclosing on the Plaintiff's home.*²

13 In *Herring*², the federal district court defined wrongful foreclosure as a tort that "exists
14 as a statutory duty . . . to exercise fairly and in good faith the power of sale in a deed to secure [a]
15 debt," and stated that "a breach of this duty is a tort compensable at law." *Id.* at *5. Finally, and
16 most importantly, none of the statutes can create or confer a right to foreclose a deed of trust
17 where the status of the beneficiary's entitlement to order the trustee to enforce the power of sale
18 is in question. Defendants have committed the tort of wrongful foreclosure against Plaintiffs.
19
20

21 **V. NOTICE PLEADING: RULE 8**

22 The McKinnys are not required to prove their entire case at the pleading stage.
23
24 Folks & O'Connor's arguments show that it has sufficient notice of the claims against
25

26 ² *Herring v. Countrywide Home Loans, Inc.*, 2007 WL 2051394 (D. Ariz. 2007) (emphasis supplied).

1 them. Folks & O'Connor is filing what amounts to be a premature Motion for Summary
2 Judgment without having to provide any disclosure or discovery to the McKinneys.
3 Therefore, Plaintiffs request the Court order the deposition of Larry Folks and Jennifer
4 Menges and production of documents relating to the transaction pursuant to Rule 56(f)
5 ARCP prior to ruling on this motion.
6

7 A complaint need only be a "plain and concise statement of the cause of action
8 such that the defendant is given fair notice of the allegations as a whole." Tarnoff v.
9 Jones, 17 Ariz. App. 240, 245, 497 P.2d 60, 65 (1972). Arizona has not adopted the more
10 stringent pleading standards of US Supreme Court cases Twombly and its progeny. See
11 Cullen v. Auto-Owners Ins. Co., 218 Ariz. 417, 418, ¶ 1, 189 P.3d 344, 345 (2008)(rejecting
12 the application of Twombly to Ariz. R. Civ. P. 8, stating that Arizona retains the lenient
13 "notice" pleading standard under Rule 8, absent constitutional amendment.)
14
15

16 When adjudicating a Rule 12(b)(6) motion to dismiss, Arizona courts look only
17 to the pleading itself and consider the well-pled factual allegations contained therein.
18 See, e.g., Dressler v. Morrison, 212 Ariz. 279, 281 ¶ 11, 130 P.3d 978, 980 (2006); Long v.
19 Ariz. Portland Cement Co., 89 Ariz. 366, 367-68, 362 P.2d 741, 742 (1961). Courts must
20 also assume the truth of the well-pled factual allegations and indulge all reasonable
21 inferences. Doe ex rel Doe v. State, 200 Ariz. 174, 175 ¶ 2, 24 P.3d 1269, 1270 (2001);
22 Long, 89 Ariz. at 367, 362 P.2d at 742.
23
24

25 IV. SUMMARY OF FACTS 26

1 The governing documents in this case---the alleged Power of Attorney to Larry
2 Folks (still undisclosed), the bifurcated Note, and the Deed of Trust (Both predatory and
3 unenforceable)--- Parties with access, including Folks & O'Connor, refused to provide
4 basic information in their sole purview and control, rendering it impossible to determine
5 who the necessary party (the true lender, creditor, or holder in due course of the
6 obligation) really was, or the amounts owed on the obligation.
7

8 Folks & O'Connor and other Defendants knew of the controversy and had a duty
9 to establish the chain of title and their authority to act on behalf of the holder in due
10 course prior to conducting the sale, but violated that duty and refused and failed to verify
11 the true facts and instead arranged for an yet unknown co-Defendant to 'bid' at the
12 alleged sale.
13

14
15 **A. The Deed of Trust**

16 • **February 7th, 2007:** Deed of Trust's recorded servicing
17 rights transferred to M&I Marshall & Ilsley Bank lacking statutory
18 disclosures and containing material misrepresentations. The note
19 apparently was securitized, insured, and placed in stream of
20 commerce through a tax-free REMIC Trust or other investment
21 vehicle, but no assignments were ever recorded.

22 • **June 4th, 2009:** Plaintiff rescinded this contract within his
23 extended rescission rights for: misrepresentation by the originator,
24 and for violation of the Arizona U.D.A.P, and for fraud. A truth-in-
25 lending claim was also made by Plaintiff as well that Defendants
26 refused to acknowledge, and therefore is NOT a Plaintiffs' cause of
 action in THIS complaint, as in the earlier complaint filed September
 9th, 2009.

1
2 • **June 5, 2009:** Larry O. Folks of Folks and O'Connor signs,
3 and causes to be recorded a Substitution of Trustee as the present
4 beneficiary Power of Attorney of Defendant M & I, curiously
5 naming himself as Trustee pursuant to an alleged and undisclosed
6 Limited Power of Attorney. The document was signed by Larry O.
7 Folks two days AFTER it was allegedly notarized "in the presence
8 of" the other DOE Defendant - Jennifer Menges.

9 • **June 5, 2009:** Larry O. Folks executed and caused to be
10 recorded a Notice of Trustee Sale on the Plaintiffs' primary
11 residence. With a NOTICE at the bottom stating *"if the sale is set
12 aside for any reason, the Purchaser at the sale shall be entitled
13 only to a return of the deposit paid. The Purchaser shall have no
14 further recourse against the Mortgagor, the Mortgagee or the
15 Mortgagee's attorney."*

16 • **August 4th - August 16th, 2009:** Kondaur Capital
17 Corporation, a SERVICER claims ownership of the Deed of Trust in
18 an assignment.

19 • **January 5th, 2010:** Although noticed *before the sale* by
20 Plaintiffs that a Restraining Order was in place from a complaint, as
21 the Maricopa Court judge acknowledged had *"several credible
22 causes of action"*. Folks & O'Connor and other DOE defendants
23 rushed a Trustee's sale Deed to Quiet Title on their fraud and
24 regulatory violations, just as Defendant Kondaur had originally
25 advertised they do all along. Defendants lacked good faith in this
26 rush and coup.

//

//

//

1 **B. The Promissory Note**

2

3 • **February 7, 2007:** Note claimed by *Originator* M&I Marshall and

4 Ilsley Bank for an unknown Real Party in Interest.

5

6 • **Sometime Later:** allegedly transferred in blank, **without a date**,

7 without recordation, without valid endorsement on the allonge,

8 without the name of the 'company' endorsing.

9

10 • **June 2009:** Folks & O'Connor and other Defendants ignore the

11 actual questions and notices of James McKinney.

12 • **August 4th - 16th, 2009:** *Servicing* changes from M & I Marshall &

13 Ilsley to Kondaur Capital Corporation of California.

14

15 • **August 16th - January 15th, 2010:** Kondaur companies and other

16 Defendants refuse to send Plaintiff a true & correct copy of note

17 allonge requested in R.E.S.P.A. requests of Plaintiff.

18 • **January 4th, 2010.** Judge issues a valid good faith TRO for

19 "multiple, credible causes of action" against Defendants' actions.

20

21 • **January 5, 2010:** Alleged Trustee Sale conducted anyway by

22 Defendants and Trustee's Deed allegedly issued and unrecorded to

23 date.

24 • **January 15th, 2010:** Non Best-Evidence allonge in blank,

25 unrecorded, undated, with fraudulent endorsements by signators

26 claiming to be Vice President at M&I Marshall & Ilsley Bank, when in

 fact the signatory was a vice president of a separate corporation listed

1 as defunct since December 31st, 2007 by the Wisconsin Department of
2 Financial Institutions.

3 • **Present:** Defendants Folks & O'Connor acting as, Accountant,
4 Agent, legal counsel, and Special Power of Attorney of other
5 Defendants, seek absolution and validation of the illegal foreclosure
6 sale of Plaintiffs home and primary residence, misusing A.R.S. 33-
7 807(E), a statute that covers a defendant that acts *solely* as a Trustee,
8 which Folks & O'Conner, definitely did not act solely as a Trustee, but
9 as accountant, power of attorney, agent, co-conspirator, etc.

10 **V. RULE 41 (a) PLAINTIFF DISMISSAL.**

11 Plaintiffs VOLUNTARILY dismissed this complaint WITHOUT PREJUDICE per
12 Rule 41(a), *before* any other claimed dismissal. Plaintiff to the best of their ability
13 discovered additional causes of action, and filed a newer more complete complaint to
14 describe the predatory loan on their retirement home, culminating in an illegal non-
15 judicial foreclosure based upon fraudulent documents fueled by arrogance and greed.
16 This would have been unnecessary, had Defendant's acted in good faith with the loan and
17 disclosure of its requirement. No assumed res judicata can be made ex post facto before
18 Defendants Rule 41(a) dismissal, to cover the sins and illegal acts of Defendants,
19 particularly when new causes of action are present. 2nd Plaintiff James McKinney (the
20 relative) made no causes of action yet till January 2010, to preserve by quiet title his
21 home equity against Defendants' illegal actions, and has the right to do so.
22

23 **VI. LEGAL ARGUMENT**

24 **A. The McKinneys Have Stated a Claim and Have Sufficiently Pled Their**
25 **Claims**
26

1
2 It is basic that a creditor seeking to enforce a security interest must prove the
3 debt pursuant to ARS §47-3301 (The UCC is based on ancient commercial law and has
4 been adopted in all fifty states), including the terms, the ownership, and the amounts due
5 and that the Trustee establish their authority to act on behalf of the holder in due course to
6 enforce the right. The non-judicial foreclosure process was not intended to be an end run
7 for illegitimate parties to obtain property based on smoke and vapor. This prejudices not
8 only the homeowner, but also the true holder of the note, as well as bone fide purchasers
9 and the confidence of the public at large.
10

11
12 Defendants Folks & O'Connor as agents owe a duty of due diligence, honesty,
13 and fairness to all the parties. Folks & O'Connor apparently reap great benefits and
14 unknown profits by foreclosing on thousands of Maricopa County homeowners acting as
15 trustee, accountant, legal counsel, power of attorney, and possibly partners or interested
16 parties in the transactions and as such they are an integral part of the scheme as alleged in
17 the Complaint.
18

19 The note ---and any evidence of a valid transfer--- is the best evidence of these
20 elements,³ but there are other ways to prove entitlement to enforce the debt, as set forth in
21

22
23 ³ The most fundamental piece of evidence to support a claim is the promissory note or instrument
24 establishing the existence and terms of the debt. A note is necessary to establish the existence of a debt,
25 its key terms, and the creditor's standing to collect the debt.

26 The note is necessary to trace the ownership of the obligation and to ensure that a creditor has
standing to bring an action to collect from a debtor. As an avalanche of securitized home loans

1 ARS §47-3301 and ARS §47-3309. Despite being given numerous pre-litigation
2 opportunities, Defendants including Folks & O'Connor have ignored statutes and law
3 requiring disclosure. Defendants have recorded, or caused to be recorded by agents, a
4 series of documents that, at best, are riddled with errors and inaccuracies and at worst,
5 smell of fraud.

7 Folks & O'Connor is the agent of all the parties to the transaction at all times prior
8 to performance of the conditions of the transaction and bears an agency relationship to
9 each of them. *Lombardo v. Albo* 199 Ariz. 97, 14 P.3d 288 (2000) cites The Restatement
10 (Second) of Agency (1958) describes both the duties of the agent to the principal, §§ 376-
11 431, and the duties of the agent to third persons, §§ 320-362. So, for example,
12 *Restatement (Second) of Agency* § 348 imposes liability on the agent to third persons for
13 representations made in a transaction on behalf of the principal. Comment c to section
14 348 acknowledges the duty of the agent to reveal the truth to the other party, and cross-
15 references *Restatement of Torts* § 551.

18
19
20
21 have entered default in the last year, courts have become frustrated at the difficulty in determining
the chain of title of the note.

22 Katherine Porter, *Misbehavior and Mistake in Bankruptcy Mortgage Claims*, 87 TEX. L.REV. 121 (2008)
23 (citing *Nosek v. Ameriquet Mortgage Co. (In re Nosek)*, 386 B.R. 374, 383-85 (Bankr. D. Mass. 2008)
24 (imposing monetary sanctions on Ameriquet, Wells Fargo, and several attorneys for misrepresenting the
25 identity of the holder of the note in bankruptcy proceedings); see also *In re Foreclosure Cases*, 521 F.
26 Supp. 2d 650, 654 (S.D. Ohio 2007) (dismissing foreclosure cases for lack of standing when ownership of
the note was not established).

1 The obligation to each is measured by an application of the "ordinary principles of
2 agency." As an agent, the trustee may be liable for negligence. This principle was found
3 applicable in Munger v. Moore, 11 Cal. App.3d 1, 7,89 Cal. Rptr. 323 (1970), wherein the
4 court stated: "That rule is that a trustee or mortgagee may be liable to the trustor or
5 mortgagor for damages sustained where there has been an illegal, fraudulent or willfully
6 oppressive sale of property under a power of sale contained in a mortgage or deed of
7 trust." (4) An agent has the duty to use reasonable skill and diligence and if he violates
8 this duty, he is liable for any loss which his principal may sustain as the result of his
9 negligence. Dahl-Beck Electric Co. v. Rogge, 275 Cal. App.2d 893, 80 Cal. Rptr. 440 (1969).

12 In general, a trustee has a general duty to conduct the sale "fairly, openly,
13 reasonably, and with due diligence," exercising sound discretion to protect the rights of
14 the mortgagor and others. Baron v. Colonial Mortgage Service C 111 Cal. App.3d 316,
15 323o.; Bank of Seoul & Trust Co. v. Marcione, 198 Cal. App.3d 113, 118, 244 Cal. Rptr.
16 1 (1988); Block v. Tobin (1975) 45 Cal. App.3d 214, 221, 119 Cal. Rptr. 288.

18 Never did Folks & O'Connor show who the current owner of the obligation was,
19 or how exactly it came to be in the hands of Kondaur Capital Corporation a self
20 proclaimed **"premier purchaser of scratch and dent residential mortgage loans"**
21 employing **"unique management, servicing and liquidation strategies"** for loans with
22 **"origination fraud"** and **"regulatory violations"** If the unique scheme can be covered
23 and validated by any self appointed Trustee without any discovery or disclosure, the
24
25
26

1 wrongdoers would achieve their objective in laundering the dirty/predatory notes with
2 origination fraud and regulatory violations and the victims, homeowners and society
3 suffer.
4

5 Krohn v. Sweatheart, 203 Ariz. 205, 52 P.3d 774 states that while the rationale of
6 setting aside judicial foreclosure sales for gross inadequacy is well understood, it is not
7 the only basis for upsetting such sales. Judicial foreclosure sales have been set aside even
8 in the absence of gross inadequacy when there has been some irregularity. "[W]here
9 there is an inadequacy of price which in itself might not be grounds for setting aside the
10 sale, slight additional circumstances or matters of equity may so justify." Mason v.
11 Wilson, 116 Ariz. 255, 257, 568 P.2d 1153, 1155 (App.1977) (citing Johnson v. Jefferson
12 Standard Life Ins., 5 Ariz.App. 587, 429 P.2d 474 (1967)). Kondaur buys "scratch and
13 dent" mortgage loans for pennies on the dollar prior to the Trustee sale and uses unique
14 liquidation strategies and agents claiming plausible deniability to game the system.
15
16

17 It is the general rule in other non-judicial foreclosure states that courts have power
18 to vacate a foreclosure sale where there has been fraud in the procurement of the
19 foreclosure decree or where the sale has been improperly, unfairly or unlawfully
20 conducted, or is tainted by fraud, or where there has been such a mistake that to allow it
21 to stand would be inequitable to purchaser and parties." Bank of America etc. Assn. v.
22 Reidy, 15 Cal.2d 243, 248, 101 P.2d 771-775 (1940). Legislatures did not intend to
23 immunize beneficiaries from liability for deceit, or to expand the risks borne by
24
25
26

1 purchasers to include the assumption of damages resulting from a beneficiary's fraud.
2 See Lassar & Gross International, Inc. v. Dunham, 196 Cal. App.3d 496, 501-502 [241
3 Cal. Rptr. 854 (1987).
4

5 In the absence of a fiduciary or confidential relationship, a duty to disclose arises
6 at common law if material facts are known only to the defendant and the defendant
7 knows that the plaintiff does not know or cannot reasonably discover the undisclosed
8 facts, Buist v. C. Dudley DeVelbiss Corp. 182 Cal. App.2d 325, 331, 332, 6 Cal. Rptr.
9 259 (1960). Undisclosed facts are material if they have a significant and measurable
10 effect on market value. Reed v. Kin, 145 Cal. App.3d 261, 267 [193 Cal. Rptr. 130
11 (1983). A breach of the duty to disclose gives rise to a cause of action for rescission or
12 damages. Rothstein v. Janss Investment Corp., 45 Cal. App.2d 64, 69 [113 P.2d 465
13 (1941).
14
15

16 Defendants seek dismissal of the Plaintiffs' claims pursuant to 12(b)6 resulting
17 from an illegal non-judicial foreclosure sale with no disclosure or proof of the legal basis
18 or authority to do so. The Deed of Trust was recorded once, and it is known the Note
19 was transferred, and the Arizona's recording statute for the transfer of an interest in real
20 property was not satisfied A.R.S. 33-411.01. There are obvious gaps in the chain of title
21 that Folks & O'Connor as agent breached their duty to Plaintiffs and failed to exercise
22 due diligence and refused to disclose material facts. Defendants Menges and Folks &
23 O'Connor had actual notice of the issues and failed to exercise due diligence in
24
25
26

1 ascertaining the validity of the assignments prior to the sale and ignored direct warnings
2 from Plaintiffs' prior to finalizing the alleged transaction.

3 Folks & O'Connor rely on ARS 33-811 which was drafted long before the
4 securitization of mortgage notes and unrecorded assignments became a common reality.
5 The statute presupposes the banks have a valid legal interest with the original deed of
6 trust, note with allonge and valid recorded assignments prior to a non-judicial foreclose
7 and that the Trustee can rely in Good Faith on the representations, which is not the case
8 here. Folks & O'Connor knew or should have known the facts prior to the sale and failed
9 to exercise due diligence and disclose the facts to Plaintiffs.
10

11 The current use of non-judicial process is in violation of substantive and
12 procedural due process as guaranteed under the Arizona and United States Constitutions
13 Folks & O'Connor should be estopped from claiming any statutory protection pending
14 full disclosure and discovery. To put the burden on the Plaintiffs/homeowners of proving
15 the claim in the pleading stage is fundamentally unfair, while all the information and
16 documentation necessary to establish the factual basis for it, is in the sole control of the
17 wrongdoers that refuse to disclose even the most basic information. Plaintiffs claim is
18 made in good faith and well founded based upon the known facts.
19

20 Defendants, Folks & O'Connor claim a valid trustee deed was issued, but the facts
21 show otherwise and the Trustee assignment is invalid. The transfer of the real interest of
22 the claimed beneficiary M&I bank appears to be fraudulent therefore no verifiable
23

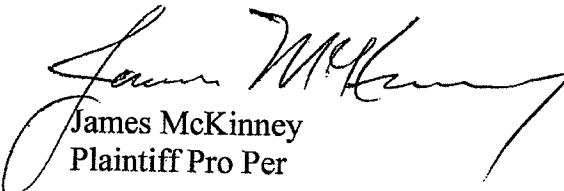
1 interest in the McKinney home could be conveyed by the Trustee. It used to be that
2 Banks were trusted and lawyers were honorable, times appear to have changed, and
3 money, greed, and power conquer all, and the rule of law is ignored, manipulated, and
4 abused.
5

6 VII. CONCLUSION

7 Based on the foregoing, the Plaintiffs McKinney respectfully request that this
8 court deny Defendants Folks & O'Connor's Motion to Dismiss and for attorney's fees
9 and sanctions. There is a good faith basis for the claims and Plaintiffs request the Court
10 order the deposition of Larry O. Folks and Jennifer C. Menges and production of
11 documents relating to the transaction pursuant to Rule 56(f) ARCP prior to ruling on this
12 motion.
13

14 If the Court determines that the Complaint lacks sufficient specificity, Plaintiffs
15 McKinney submit an amended complaint, and requests the court give them leave to
16 amend that proposed amended complaint, if necessary. If the Court determines that
17 Defendants' Motion to Dismiss for Attorney's Fees and Sanctions resulted in the waste of
18 finite judicial resources, the McKinneys request that the Court rule accordingly.
19

20 Respectfully submitted this 13th day of March 2010.
21

22
23 
24 James McKinney
25 Plaintiff Pro Per
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James McKinney
Plaintiff Pro Per

CERTIFICATE OF SERVICE

ORIGINAL filed with the Clerk of the Court,
hand-delivered this 15 day of March 2010, to:

Clerk of the Court
Pinal County Superior Court

A Copy of the foregoing was mailed
this 15 day of March 2010 to:

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Gust Rosenfeld, P.L.C
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Larry O. Folks
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1850 N. Central Avenue #1140
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Jennifer C. Menges
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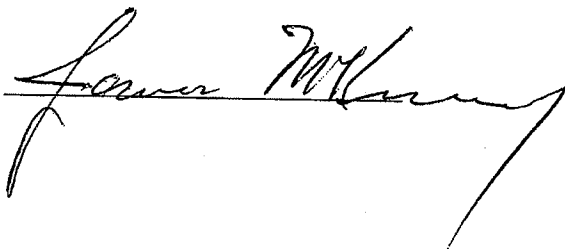


EXHIBIT 13

RECEIVED
MAR 30 2010
LES

Larry O. Folks, #012142
Kathleen A. Weber, #016076
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(602) 515-0129
(weber@folksconnor.com)
*Attorneys for Defendant Folks &
O'Connor, PLLC*

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PINAL

JAMES McKINNEY, an individual,

Case No.: CV2010-00970

Plaintiff,

vs.

**REPLY IN SUPPORT OF MOTION
TO DISMISS BY DEFENDANT
FOLKS & O'CONNOR, PLLC**

KONDAUR CAPITAL
CORPORATION, a Delaware
corporation; et al.,

(Hon. Gilberto V. Figueroa)

Defendants.

Defendant Folks & O'Connor, PLLC ("Folks & O'Connor") hereby replies to the Response (the "Response") filed by Plaintiffs James McKinney and James McKinney ("Plaintiffs") to Folks and O'Connor's Motion to Dismiss (the "Motion to Dismiss") and to Plaintiffs' Request for Time for Discovery Pursuant to ARCP 56(f) ("Request for Discovery"). This Reply is submitted pursuant Ariz.R.Civ.P. 7.1 and is supported by the following Memorandum of Points and Authorities which is incorporated herein by this reference.¹

///

///

¹ All capitalized terms used herein are defined in the Motion to Dismiss and are incorporated herein by this reference.

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs' Response raises the following arguments in response to the Motion to Dismiss: (i) the Motion to Dismiss is an impermissible motion for summary judgment; (ii) the Motion to Dismiss entitles Plaintiffs to conduct discovery under Ariz.R.Civ.P. 56(f); (iii) motions to dismiss are disfavored and the Complaint complies with Ariz.R.Civ.P. Rule 8; and (iv) res judicata does not apply because Plaintiff James McKinney the elder voluntarily dismissed the earlier Pinal County case, Case No. CV2009-03764, and James McKinney the younger was not a party to that case. In addition to the foregoing, Plaintiffs include a long list of additional factual allegations to support their claims, assert new claims (including that the Loan was predatory and the Defendants wrongfully foreclosed upon the Property), and argue that the Complaint is pled sufficiently to withstand the Motion to Dismiss.

The Response fails for many reasons. First, the Complaint fails to adequately address and cite any authority regarding the application of the doctrine of res judicata and Rule 41(b) which bar Plaintiffs' claims against Folks & O'Connor. Second, the Response fails to address the substantive issues raised in the Motion to Dismiss, including that: (i) A.R.S. § 33-807(E) bars suit against Folks & O'Connor as trustee; (ii) Plaintiffs failed to identify any contract between them and Folks & O'Connor which forms the basis for the breach of contract claim; (iii) the Complaint fails to comply with Rule 9(b) with respect to the ACFA and fraud/conspiracy claim; (iv) the Complaint fails to state how TILA and HOEPA apply to Folks & O'Connor, and Plaintiffs do not respond to the fact that TILA is not a valid defense to foreclosure or that the TILA and HOEPA claims are barred by the respective statutes of limitation; and (v) the Plaintiffs have not shown "outrageous" conduct by Folks & O'Connor to justify proceeding on a claim of intentional infliction of emotional distress. Third, the Response fails because, to the extent that the Motion to Dismiss may be considered a motion for summary

1 judgment, Plaintiffs have not complied with Rule 56(f) which requires submission of a
2 sworn statement about the evidence sought to defend against a motion for summary
3 judgment. Fourth, while Arizona has less restrictive pleading requirements than
4 *Twombly* and motions to dismiss may be disfavored, the Complaint must still comply
5 with the pleading requirements of Rule 8(a) and 9(b) and it does not. And finally, the
6 Response includes numerous statements of additional factual allegations and causes of
7 action (i.e., predatory lending, wrongful foreclosure, fraud in procurement of
8 foreclosure, breach of duty to disclose) that are not currently part of the Complaint and
9 cannot be considered in connection with the pending Motion to Dismiss. The Response
10 cannot and does not cure the deficiently pled Complaint which must be dismissed under
11 Rule 12(b)(6).

12 **I. Res judicata bars Plaintiffs' claims against Folks & O'Connor.**

13 Plaintiffs Response failed to cite any legal support countering the authoritative
14 cases cited in the Motion to Dismiss regarding the application of res judicata and Rule
15 41(b) to this case. Indeed, all of the arguments raised by Plaintiffs are dealt with in the
16 cases cited in the Motion to Dismiss. First, Plaintiffs argue James McKinney, the elder,
17 voluntarily dismissed the earlier Pinal County case prior to Judge O'Neil ruling on
18 Folks & O'Connor's Motion to Dismiss. However, the motion to dismiss pending
19 before Judge O'Neil was fully briefed before Plaintiffs improperly instituted this case in
20 Maricopa County and Judge O'Neil explicitly retained jurisdiction over the case to
21 resolve the pending motion despite Plaintiff's voluntary dismissal filed after
22 commenced suit in Maricopa County. *Murphy v. Board of Medical Examiners*, 190
23 Ariz. 441, 449, 949 P.2d 530, 538 (App. 1997) (res judicata bars a second suit between
24 the parties or privies based on the same cause of action, even where the judgment in the
25 first action is entered after the second action is filed). Second, Judge O'Neil's dismissal
26 of the first Pinal County action was final under Rule 41(b). *Anguiano v.*

1 *Transcontinental Bus System*, 76 Ariz. 246, 263 P.2d 305 (1953) (involuntary dismissal
2 of first case operated as a ruling "on the merits" under Rule 41(b) and barred second
3 action under res judicata). Third, Plaintiffs argue that res judicata does not apply
4 because James McKinney, the younger, was not a party to the first action. However, res
5 judicata bars the second suit between not just parties, but also their privies, based on the
6 same cause of action. *Id.* For all of these reasons, the Complaint in this case is barred by
7 res judicata and Rule 41(b).

8 **II. The Response fails to address the substantive arguments of the**
9 **Motion to Dismiss.**

10 Plaintiffs' Response fails to respond to the substantive arguments against the
11 Complaint as set forth in the Motion to Dismiss, including that: (i) A.R.S. § 33-807(E)
12 bars suit against Folks & O'Connor as trustee; (ii) Plaintiffs failed to identify any
13 contract between them and Folks & O'Connor which forms the basis for the breach of
14 contract claim; (iii) the Complaint fails to comply with the heightened pleading
15 requirements of Rule 9(b) with respect to the ACFA and fraud/conspiracy claim; (iv)
16 the Complaint fails to state how TILA and HOEPA apply to Folks & O'Connor, and
17 Plaintiffs do not respond to the fact that TILA is not a valid defense to foreclosure or
18 that the TILA and HOEPA claims are barred by the respective statutes of limitation; and
19 (v) the Plaintiffs have not shown "outrageous" conduct by Folks & O'Connor to justify
20 proceeding on a claim of intentional infliction of emotional distress. These deficiencies
21 in the Complaint and Plaintiffs' failure to address these deficiencies in the Response
22 entitle Folks & O'Connor to dismissal of each of these claims.

23 **III. Plaintiffs didn't comply with Rule 56(f) and are not entitled to**
24 **discovery.**

25 The Motion to Dismiss was filed pursuant to Rule 12(b)(6) and attacked the
26 deficiencies of the Complaint. The Motion to Dismiss is not a motion for summary

1 judgment, however, even if it were such a motion Rule 56(f) requires any request to
2 conduct discovery in response to a motion for summary judgment must include a sworn
3 statement outlining: (i) the particular evidence beyond the party's control; (ii) the
4 location of the evidence; (iii) what the party believes the evidence will reveal; (iv) the
5 methods used to obtain it; and (v) an estimate of the amount of time the additional
6 discovery will require. *Lewis v. Oliver*, 178 Ariz. 330, 338, 873 P.2d 668 (App. 1993).
7 The Response does not include, and was not accompanied by, any such information.
8 Thus, the Court should deny Plaintiffs' request to conduct discovery under Rule 56(f).

9 **IV. Motions to dismiss may be disfavored, but the Complaint must still**
10 **comply with the Rules of Civil Procedure and Arizona law; since it**
11 **does not, it should be dismissed.**

12 Plaintiffs argue the Motion to Dismiss should be denied because such motions
13 are disfavored and *Twombly* does not apply. While there is authority for that position,
14 that argument does not permit pleadings which fail to meet the pleading standards set by
15 Rules 8(a) and 9(b) to pass a motion to dismiss. Despite the less restrictive standard in
16 Arizona pleading requirements, the Complaint should still be dismissed for all of the
17 reasons set forth herein.

18 **V. Plaintiffs' allegations of additional facts and causes of action in the**
19 **Response are irrelevant to the Motion to Dismiss.**

20 The Response includes numerous additional allegations of fact and even asserts
21 new causes of action against Folks & O'Connor, including but not limited to the
22 allegation that the Loan was predatory and the Defendants wrongfully foreclosed upon
23 the Property. Amending pleadings is governed by Ariz.R.Civ.P. 15. Plaintiffs cannot
24 amend the Complaint by alleging new facts and claims in the Response to the Motion to
25 Dismiss. The Motion to Dismiss relates solely to the deficiently pled Complaint
26

FOLKS & O'CONNOR, PLLC
1850 NORTH CENTRAL AVE, SUITE 1140
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(602) 262-2265

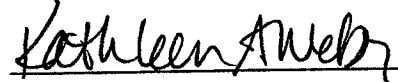
1 Plaintiffs filed. The new allegations and causes of action asserted by Plaintiffs in the
2 Response do not cure the deficient Complaint that should now be dismissed.

3 WHEREFORE, for all of the foregoing reasons, Folks & O'Connor, PLLC
4 respectfully requests that the Court dismiss all counts of Plaintiffs' Complaint against it
5 with prejudice pursuant to Ariz.R.C.P. Rule 12(b)(6) and award Folks & O'Connor its
6 attorneys' fees and costs in accordance with A.R.S. § 33-807(E).

7 RESPECTFULLY SUBMITTED this 29th day of March, 2010.

8 **FOLKS & O'CONNOR, PLLC**

9 By



Larry O. Folks

Kathleen A. Weber

Suite 1140

1850 North Central Avenue

Phoenix, AZ 85004

*Attorneys for Defendant Folks &
O'Connor, PLLC*

15 **ORIGINAL** of the foregoing filed
16 this 29th day of March, 2010, to:

17 Clerk of the Pinal County Superior Court
18 971 N. Jason Lopez Circle, Building A
Florence, AZ 85232

19 **COPY** of the foregoing hand-delivered
20 this 29th day of March, 2010, to:

21 Hon. William J. O'Neil
22 Pinal County Superior Court
971 N. Jason Lopez Circle, Building A
Florence, AZ 85232

FOLKS & O'CONNOR, PLLC
1850 NORTH CENTRAL AVE, SUITE 1140
PHOENIX, ARIZONA 85004
(602) 262-2265

1 **COPY** of the foregoing mailed via first
2 class mail and email* this 29th day of March, 2010, to:

3 Mark L. Collins, Esq.*
4 Robert M. Savage, Esq.*
5 Gust Rosenfeld P.L.C.
6 One S. Church Avenue, Suite 1900
7 Tucson, AZ 85701-1627
8 *Attorneys for Defendants Kondaur Capital*
9 *Corporation, Kondaur Venture X, LLC, and*
10 *Kondaur Capital Trust Series 2009-3*

11 Laura Sixkiller, Esq.*
12 Greenberg Traurig, LLP
13 2375 East Camelback Road, Suite 700
14 Phoenix, AZ 85016
15 *Attorneys for Defendant M&I Marshall and Ilsley Bank*

16 James McKinney
17 James McKinney
18 618 S. Wickiup Road
19 Apache Junction, AZ 85119
20 *Plaintiffs, pro per*

21 By 
22 *An Employee of Folks & O'Connor, PLLC*
23
24
25
26

EXHIBIT 14

FILED
KRISTI YOUTSEY RUIZ
CLERK OF SUPERIOR COURT

2009 SEP -8 PM 4:35

BY [Signature]
DEPUTY

JAMES McKINNEY
618 S. WICKIUP ROAD
APACHE JUNCTION, ARIZONA 85119
(602) 717-7502
PRO PER (SELF REPRESENTED LITIGANT)

IN THE SUPERIOR COURT OF ARIZONA
PINAL COUNTY

JAMES McKINNEY, an individual,
Plaintiff,
vs.

KONDAUR CAPITAL CORPORATION, a
Delaware Corporation; KONDAUR VENTURE
X, LLC; an Delaware LLC; KONDAUR
CAPITAL TRUST SERIES 2009-3, a Delaware
Statutory Trust; DEUTSCHE BANK TRUST
COMPANY DELAWARE, a Delaware
Corporation; PAULA CHASTAIN, an individual;
PETER BAI, an individual; FOLKS AND
O'CONNOR, PLLC, an Arizona LLC;
SECURITY TITLE AGENCY, an Arizona
Corporation; M & I MARSHALL AND
ILSLEY BANK, a Wisconsin Corporation; JOHN
JONES and JANE DOE JONES, husband and
wife, JOHN DOES and JANE DOES I-X;
ABC CORPORATIONS I-V; and XYZ
PARTNERSHIPS I-V; ABC LLCs I-V, XYZ
TRUSTS I-V;
Defendants.

CASE NO.: CV 200903764
COMPLAINT
WILLIAM J. O'NEIL
DIV 4

Breach of Contract
Violation of AZ Consumer Fraud Act
Violation of Truth in Lending Act
15 U.S.C. § 1601 et. seq.
Violation of Home Ownership and Equity
Protection Act, 15 U.S.C. § 1639
Quiet Title A.R.S. § 12-1102 et. seq.
Violation of the Fair Debt Collections
Practices Act
Violation of the Arizona Assignment and
Satisfaction of Mortgage Law
and Invalid Deed of Trust Law
A.R.S. § 33-420 et. seq.
Infliction of Emotional Distress
Fraud – Misrepresentation and Conspiracy
Conversion/Civil Theft
Violation of the Uniform Commercial Code
as defined in A.R.S. § 47-3100
et. seq. and Arizona's Recording
Statute
Civil RICO 18 U.S.C. § 1961-1968

Temporary Restraining Order,
Preliminary and Permanent Injunction
(Ex Parte Emergency Application)

Plaintiff James McKinney against Defendants, alleges as follows:

SCANNED



THE PARTIES

1. Plaintiff JAMES MCKINNEY is a retired individual, living in the State of Arizona at all times relevant to the Complaint. Hereinafter (Plaintiff) or (Consumer)

2. Plaintiff is a "consumer" as defined by TILA, 15 U.S.C. § 1602(h) and Federal Reserve Board Regulation Z, 12 C.F.R. § 226.2(a)(11).

3. Defendant KONDAUR CAPITAL CORPORATION, is a Delaware Corporation doing business in Arizona;

4. Defendant KONDAUR VENTURE X, LLC, is a Delaware LLC doing unregistered business in Arizona;

5. Defendant KONDAUR CAPITAL TRUST SERIES 2009-3, a Delaware Statutory Trust doing unregistered business in Arizona;

6. Defendant DEUTSCHE BANK TRUST COMPANY DELAWARE, is a Delaware Corporation doing business in Arizona;

7. Defendant PAULA CHASTAIN is an individual involved in this transaction as a debt collector.

8. Defendant PETER BAI is an individual involved in this transaction as a debt collector.

9. Defendant FOLKS AND O'CONNOR, PLLC, is an Arizona LLC doing business in Arizona;

10. Defendant SECURITY TITLE AGENCY is an Arizona Corporation doing business in Arizona;

11. Defendant M & I MARSHALL AND ILSLEY BANK, is a Wisconsin Corporation doing business in Arizona;

1 12. Defendants set forth above are hereinafter collectively referred to as
2 "Defendants".

3 13. Defendants are each a "creditor" as defined in the TILA, 15 U.S.C. § 1602(f) and
4 Regulation Z, 12 C.F.R. § 226.2(a)(17)(i).
5

6 14. By their own admission, Defendants are each a "debt collector" pursuant to 15
7 U.S.C. § 1692(a)(6).

8 15. Defendants John Does and Jane Does I-X, ABC Corporations I-V and XYZ
9 Partnerships I-V, and ABC LLCs or other individuals, directors and officers or business
10 entities who may be liable to Plaintiff but whose identities are not presently known will be
11 added, at which time Plaintiff will seek leave to amend the Complaint.
12

13 16. Defendants, either individually or collectively, have caused events to occur in
14 Arizona giving rise to this Complaint. The damages incurred by Plaintiff far exceed the
15 minimal jurisdictional requirements of this Court.

16 JURISDICTION AND VENUE

17 17. This Court has jurisdiction over the matters related to the emergency, injunctive,
18 provisional, and equitable relief sought herein, pursuant to the agreements of the parties
19 referenced below.
20

21 18. Venue is proper pursuant to Arizona Revised Statutes § 12-401, et seq.

22 19. The parties herein are subject to certain contractual obligations that are the
23 subject of this litigation.

24 20. This action is brought, for among other purposes, to restrain and enjoin the
25 Defendants, their agents, employees, representatives, lawyers, directors and officers, from
26

SCANNED

1 taking any action to improperly transfer, dispose of, or use the property of Plaintiff to foreclose
2 and gain possession of Plaintiff's Property.

3 21. All exhibits are true and correct and attached hereto and incorporated herein.

4 GENERAL ALLEGATIONS

5 I. The Mortgage

6 22. Plaintiff is the owner of Property at 618 S. Wickiup, Apache Junction Arizona
7 85219, Tax Parcel No. 103-04-057A4 - (the "Property").

8 23. In February 2007, the Plaintiff financed his free and clear \$170,000 lot at 618 S.
9 Wickiup, Apache Junction, Arizona, with M & I Bank. Although M & I Bank initially labeled
10 the transaction as a "construction loan" at application, M & I added to the loan amount, extra
11 consumer, non-construction funds of approximately \$71,000 later within the transaction. Then
12 at the contract signing on February 7, 2009, when M & I had Plaintiff endorse the paperwork,
13 M & I had labeled the entire transaction as a "Refinance". (Exhibit A). This Refinance
14 wording was stamped on the Deed of Trust and it was recorded as a matter of public record as
15 such. Plaintiff had a free and clear \$170,000 lot, with \$71,000 extra in consumer cash, and
16 thereby assumed, that at least in part, that is what M & I wanted to encumber as a Refinance.
17

18 24. The total loan amount was \$408,458.

19 25. Over a six-month period, Defendant Servicer/Debt Collector M & I Bank has
20 unlawfully refused to clearly answer six separate R.E.S.P.A Qualified Written Requests by the
21 Consumer to clarify this situation. The Consumer therefore has had to assume the Contract is
22 as actually written and publicly-recorded between them; a partial Refinance or whole
23 Refinance transaction; per the stamping of Refinance on the face of the Deed of Trust, and the
24 additional consumer funds he received.
25
26

1 26. Between January to February 2007, M & I Bank violated the Home Ownership
2 and Equity Protection Act, 15 U.S.C. § 1639 (hereinafter H.O.E.P.A.) when qualifying this 71-
3 year-old Plaintiff for \$2,375.00 monthly interest, adjustable, when M & I bank themselves
4 qualified him to pay this amount upon a "\$1 a month" income, as proffered by and written to
5 underwriting by a M & I Bank employee.
6

7 27. M & I Bank clearly knew the requirements of H.O.E.P.A. yet refused to follow it
8 in this transaction, for their profit and gain.

9 28. Since M & I Bank refuses to follow R.E.S.P.A and plainly answer Plaintiff's
10 well-written Qualified Written Requests (QWR), it appears to Plaintiff on information and
11 belief, that M & I Bank has securitized and/or sold this loan for consideration to another
12 unknown party. M & I Bank has repeatedly refused to answer this simple discovery question
13 over six months: Who is the Holder in Due Course/Real Party of Interest to this transaction?
14

15 29. Only a Holder in Due Course can be a Real Party of Interest in any real estate
16 Chain of Title.

17 30. Only a Real Party of Interest can plead and defend in this Court per 16 A.R.S.
18 Rules of Civil Procedure, Rule 17(a).

19 31. This refusal of Defendants to answer Plaintiff's multiple R.E.S.P.A. QWRs has
20 led Plaintiff, upon information and belief, to make in response to this default the following,
21 lack of Real Party of Interest allegations. Simple obedience to R.E.S.P.A by Defendants would
22 have eliminated this unnecessary confusion for Plaintiff and this Court. Such 6-months
23 evasiveness by Defendants' has hindered Plaintiff in creating brevity from proper discovery,
24 and has damaged Plaintiff well beyond the \$2,000 statutory R.E.S.P.A. fines of each and every
25 such violation of non-disclosure. Even if the original Real Party of Interest is found, their
26

1 assignee is not and cannot be a Holder in Due Course, since the assignee knowingly bought the
2 transaction in default, dispute, and dishonor.

3 32. Defendants' evasiveness has caused repeated unnecessary emotional distress
4 upon this retiree Plaintiff as well, as the parties repeatedly threaten non-judicial foreclosure as
5 punishment for asking. Defendants should respond to the R.E.S.P.A. questions first.
6 Defendants should first correct the violations of law first, before initiating any non-judicial
7 administrative foreclosure proceeding.
8

9 33. By January 2009 in a rapidly deteriorating economy, Plaintiff had used up his
10 bank savings from the refinance. Plaintiff has been trying to sell the beautiful property for two
11 years in a severely declining real estate market; to save his original lot equity, and every
12 Holder in Due Course involved.
13

14 34. In the spring of 2009, Plaintiff approached M & I to do a 'workout plan', who
15 refused to do anything reasonable in light of Plaintiff's current income. This especially
16 considering that M & I grossly violated H.O.E.P.A. to begin with. And would normally try to
17 mitigate that.
18

19 35. This violation of H.O.E.P.A. was also a separate state violation of the Arizona
20 Consumer Fraud Act, A.R.S. §§ 44-1522, *et seq.* ("A.C.F.A.").
21

22 36. In May 2009, Plaintiff discovered that within the Refinance portion of this loan,
23 M & I bank had failed to properly disclose the material notices and terms of the loan in
24 Material Breach to Truth-In-Lending, 15 U.S.C. § 1635 et. al.
25

26 II. TILA Rescission

SCANNED

1 37. 15 U.S.C. § 1635 (f) et. seq. allows Obligor a timely 3-year Notice of Rescission
2 on the Refinance portion of a loan, and when rescinded voids any security interest (Deed of
3 Trust) per § 1635 (b).

4 38. On June 4th, 2009 Plaintiff pursuant to TILA, rescinded the Refinance portion of
5 the transaction by certified mail notice to M & I Bank. (Exhibit B).

6
7 **III. Material Breach Rescission**

8 39. Wholly regardless of Truth-In-Lending Rescission, separately in May 2009,
9 Plaintiff also discovered that M & I Bank failed to properly disclose the material notices, and
10 terms of the loan, violated regulatory laws such as H.O.E.P.A and other rescission precedents...
11 All actions are separate state-related Material Breaches of Arizona's Consumer Fraud Act
12 (A.C.F.A.).

13 40. Severally, Plaintiff rescinded on June 4th, 2009 for these violations as well.
14 (Exhibit B, paragraphs 3-5).

15
16 **IV. Undisclosed Real Party of Interest is not in Court per R.C.P. 17(a)**

17 41. Defendant M & I Bank is known to be heavily involved in undisclosed
18 securitization of borrowers signatures on mortgage loans. Numerous SEC 8-K and 10-K
19 filings of M & I document these securitized, multiple-entity relationships. Defendant M & I
20 Bank has repeated refused to disclose which specific entities filings are involved.

21 42. As a violation of A.C.F.A. against the interests of Plaintiff, on information and
22 belief to date, Defendant M & I failed to disclose the hidden securitization of the borrower's
23 signature, and/or the sale-for consideration of the loan to a third unknown party. This portion
24 of the note contract was not known nor disclosed to Plaintiff, and misrepresented and
25
26

1 concealed by this Defendant. The unknown Real Party of Interest failed to disclose these
2 particulars of the loan as well.

3 43. M & I Bank none-the-less, instead of correcting the misrepresentation, legal, and
4 fatal regulatory breaches they knew about, after being noticed in writing on June 4th, 2009,
5 purposely recorded a non-judicial foreclosure on June 5th, 2009 with Defendant Folks &
6 O'Connor.
7

8 **V. Successor Trustee lacks Chain of Title from Holder in Due Course**

9 44. Successor Trustee, debt collector Folks & O'Connor also well knew about the
10 June 4th, 2009 Rescission, both in writing and verbally, before filing their Notice of Trustee
11 Sale, but went ahead and recorded it anyway in the public records on June 5th, 2009 to preserve
12 their fees, percentages, and their profitable business relationship with M & I Bank.
13

14 45. By proceeding on a previously rescinded loan, Folks & O'Connor breached their
15 Trusteeship. (A courtesy-notice conversation was recorded, pre-filing with them on June 5th,
16 2009).
17

18 46. Defendant Folks & O'Connor conspired with M & I in Breach, to damage
19 Plaintiff needlessly anyway, by rush the clock on non-judicial foreclosure on a disputed, void
20 security interest.

21 47. Defendant Folks & O'Connor lacks Clean Hands.

22 48. Defendant Folks & O'Connor thereby is in Breach.

23 **VI. No Defendant is a Holder in Due Course for Standing per R.C.P. 17(a)**

24 49. After these events, between June 2009 and August, 2009, M & I Bank
25 nonetheless, instead of correcting the mounting misrepresentation, legal, and fatal regulatory
26

1 breaches they knew about, instead sold M & I's *Servicer's* rights to a Delaware corporation
2 called Kondaur Capital Corporation, operating out of California.

3 50. Amazingly, Kondaur Capital Corporation boastfully advertises itself on its
4 internet home page "Welcome to Kondaur Capital Corporation" as 'buying' notes with "*Loans*
5 *with origination fraud*", and "*Loans with regulatory violations*". (Exhibit C). for according
6 to their 4-08-09 Kondaur's newsletter, "Pennies on the Dollar".
7

8 51. Kondaur's CEO Joe Daurio claimed in Kondaur's 'newsletter' in April of 2009:
9 "....a loan is scratch-and-dent for any of the following three reasons: loan performance - the
10 loan is either in default or was previously in default; a loan where a regulation was violated
11 in the origination process; or for underwriting reasons that involved fraud." (Exhibit D -
12 "Scratch-and-dent Loan Market Offers Outlet", page 2).
13

14 52. Kondaur knowingly, proudly, and purposely, purchases notes throughout the
15 country with regulatory and fraud violations. Kondaur advertises itself as doing the same in
16 the local newspapers such as LA Times and Orange County Register.

17 53. If Kondaur Capital Corporation did in fact actually buy the disputed Note,
18 instead of just servicing it, on information and belief, Plaintiff estimates that Kondaur's
19 purchase was between \$170,000-\$219,000 dollars, perhaps less, based on Kondaur's boasted
20 "*Pennies on the Dollar*" enterprise and advertising, and their foreknowledge of regulatory
21 violations and rescission, dispute, et. al. in this loan. Kondaur and M & I Bank has refused this
22 disclosure to Plaintiff in violation of the R.E.S.P.A. QWR.
23

24 54. Kondaur aids, abets, and furthers M & I's scheme of wiping away any chance to
25 rectify and prosecute regulatory violations, misrepresentations, and breaches; with the use of
26 Kondaur's employees affectionally called 'Combat Loss Mitigators'. These Combat

1 Mitigators repeatedly threaten homeowners with Arizona Non-judicial foreclosure process and
2 short dates; to badger weary homeowners to just ignore the disputed breaches and claims, and
3 take a 'cash settlement' to abandon their home, its equity, and the homeowner's regulatory and
4 F.D.C.P.A. disputes.

5 55. Kondaur conspired with M& I Bank and all other Defendants to profit greatly
6 with their 'Pennies on the Dollar' enterprise with M & I Bank and other Defendants.

7 56. Kondaur conspired other Defendants to quickly liquidate the homeowner out of
8 his remaining property, leaving Defendant out on the street, without the security of a lifetime's
9 work of assets.

10 57. To aid this regulatory-violating scheme, Kondaur moralizes to the homeowner
11 during every call to drop their claims and 'go out and rent a place' and 'get on with your life'.
12

13 58. Although this Plaintiff homeowner has \$170,000 of his retirement earnings tied
14 up in the property, Kondaur repeatedly offered Plaintiff \$5,000 for future 'rent', thereby
15 concealing these fraud and violations of A.C.F.A. and H.O.E.P.A. et. al., insuring they will
16 never be adjudicated in court.
17

18 59. Kondaur assumed the Servicing and Debt Collection of this Note by letter notice
19 to the Plaintiff dated July 31st, 2009. (Exhibit E).
20

21 60. On August 18th, 2009, Plaintiff sent this new servicer, Kondaur a QWR
22 requesting information; primarily to document who is actually is the Real Party of Interest, and
23 if that Party is a Holder in Due Course.

24 61. Servicer Kondaur is required by law to answer this QWR *and* as debt collector,
25 not to report any negative credit information during the answer time, usually 60 business days
26 per R.E.S.P.A. and per Kondaur's own letter notice to Plaintiff.

1 62. Kondaur as of the September 8th 2009 date of this complaint has not answered
2 this QWR, since assuming service of this account.

3 63. Kondaur violates R.E.S.P.A. and thereby A.C.F.A. in negatively reporting and
4 pursuing a disputed non-judicial foreclosure, when they haven't even attempted to answer this
5 QWR yet, to the detriment of Plaintiff.

6 64. Kondaur has not sent an Assignment of Beneficial Interest to Defendant, yet
7 wishes to take his house.

8 65. Upon information and belief, Defendant servicer Kondaur Capital Corporation of
9 Delaware likely does not even own the loan.

10 66. One of the 43 other Kondaur Trusts, entities, LLCs located in Delaware and
11 foreign nations may have 'bought' the loan.

12 67. Kondaur has not answered Plaintiff's QWR questions about any of these entities
13 either.

14 68. Because neither M & I nor Kondaur has answered their separate QWRs, Plaintiff
15 uses the term 'Kondaur' in describing a plethora of 44 entities and their concealed relationships
16 and inter-workings, presently unknown to Plaintiff and this Court. All of the entities appear to
17 have the word "Kondaur" within their name, from a search of the Delaware Corporation
18 Commission. (Exhibit F). Only one out of the 44 entities, Kondaur Capital Corporation, a
19 debt collector/servicer, is registered to do business in Arizona at the Arizona Corporation
20 Commission.

21 69. As of September 8, 2009, a day before their attempted non-judicial foreclosure
22 'at the courthouse entrance' on September 9th, 2009, Kondaur has not sent Plaintiff any copy of
23
24
25
26

1 a Assignment, for Plaintiff to even know who actually is a potential Holder in Due Course of
2 this matter.

3 70. Nonetheless, neither Kondaur nor any of its labyrinth entities can *never* be a
4 Holder in Due Course, even if they paid 'pennies on the dollar' or considerable more
5 consideration for the Note, as they knowingly violated Arizona's Uniform Commercial Code,
6 A.R.S. 47 § 3302, in any purchase from M & I.
7

8 **VII. Holder in Due Course limited by ARS 47 § 3302**

9 71. ARS 47 § 3302 defines a Holder in Due Course as follows: "Holder in due
10 course requires that the 2. The holder took the instrument: (a) For value; (b) **In good faith**; (c)
11 **Without notice that the instrument is overdue or has been dishonored** or that there is an
12 uncured default with respect to payment of another instrument issued as part of the same series;
13 (d) Without notice that the instrument contains an unauthorized signature or has been altered;
14 (e) Without notice of any claim to the instrument described in section 47-3306; and (f)
15 **Without notice that any party has a defense or claim in recoupment described in section**
16 **47-3305, subsection A."**
17

18 72. Blacks Law Dictionary defines a Holder in Due Course as follows: A **holder in**
19 **due course** is a person who takes a negotiable instrument, such as a promissory note, for value
20 **without knowledge** of any apparent defect in the instrument **nor any notice of dishonor.**
21 **(Black's Law Dictionary 2nd Pocket ed. 2001 pg. 322).**
22

23 73. Since April to August 2009, Kondaur knowingly advertised for loans with these
24 same exact known defects of dispute, defect, uncured default, and notice of dishonor, to M & I
25 Bank.
26

1 74. Kondaur, or its assigns, by knowingly 'purchasing' a loan on July 31st, 2009 with
2 known disputes, dishonor, defects, or defenses voids any claim by Kondaur as a Holder in Due
3 Course whatsoever.

4 75. None of the Defendants are a Holder in Due Course.

5 76. Only a Holder in Due Course has standing as a Real Party of Interest in this
6 court.
7

8 **VIII. Defendants lack Good Faith**

9 77. Such a purchase, with purposely known and documented disputes, dishonor,
10 and/or defects, purposely pursued for extraordinary profit, lacks any Good Faith by
11 Defendants.
12

13 78. This lack of Good Faith by Defendants has caused Plaintiff needless emotional
14 distress.

15 79. This lack of Good Faith by Defendants has caused Plaintiff unnecessary
16 damages.

17 **IX. Defendants lack Clean Hands in this Transaction**

18 80. Such a purchase with disputes, dishonor, and/or defects known and documented
19 beforehand, purposely stalked for profit, also lacks Clean Hands by all Defendants.
20

21 81. Defendants' lack of Clean Hands in this transaction has caused Plaintiff
22 unnecessary and substantial worry and emotional distress.

23 82. Defendants' lack of Clean Hands in this transaction has also caused Plaintiff
24 time-delays and unnecessary damages.

25 83. On or about June 5th, 2009, Folks and O'Connor, as Trustee filed a Notice of
26 Trustee Sale. The sale is scheduled for September 9th, 2008 at 9:05 a.m. at the main entrance

1 to the Pinal County Superior Court Building. A true and correct copy of the Notice of Trustee
2 Sale is attached hereto as (Exhibit G) and incorporated herein.

3 84. The Plaintiff has asked for proof of all documentation regarding his original
4 executed loan documents *and assignments*. Despite repeated attempts to M & I Bank for a
5 *complete* copy of original executed loan documents and assignments were never received by
6 the Plaintiff.
7

8 85. The Plaintiff also asked for proof of all Assignments of his Mortgage and
9 Promissory Note from Defendant Kondaur. Despite numerous attempts to M & I, Kondaur,
10 Folks & O'Connor, et. al., the Plaintiff still has no proof that Kondaur is the Holder in Due
11 Course without dishonor or defect.
12

13 **X. Defendants' F.D.C.P.A. violations**

14 86. From January 2009 to August 2009, Defendants M & I, Kondaur, Folks and
15 O'Connor, sent the Plaintiff several letters. These letters falls under the Fair Debt Collection
16 Practices Act a Federal Law, which prohibits the use of "abusive, deceptive, and unfair debt
17 collection practices by many debt collectors". 15 U.S.C. §1982.
18

19 87. By their admission, Kondaur, Folk & O'Connor, et. al. each are a "debt
20 collector" pursuant to 15 U.S.C. § 1692(a)(6).
21

22 88. There are numerous violations of the FDCPA in the Defendants'
23 communications. First, the communication must state the name of the actual creditor. The
24 recent letter incorrectly states that the creditor is Kondaur Capital Corporation. Kondaur
25 Capital Corporation is nothing but a Servicer, according to Kondaur's own August 4th, 2009
26 letter. (Exhibit H). Chain of Title is unrecorded, deficient, and illegal.

89. The July 31st 2009 Kondaur letter states that, the firm will assume the debt to be valid unless you, within thirty days after receipt of this notice, dispute the debt in writing. If there is a dispute in writing, then the firm promises to obtain VERIFICATION OF THE DEBT, the Defendant's representative promises to provide the Plaintiff with THE NAME AND ADDRESS OF THE ORIGINAL CREDITOR, IF IT IS DIFFERENT FROM THE CURRENT CREDITOR.

90. Despite the Plaintiff's Qualified Written Requests on August 18th, 2009, there has received no written answer from Kondaur or any of the Defendants.

91. The Plaintiff's August 17th, 2009 dispute under F.D.C.P.A. has also been ignored. A true and correct copy of the August 17th, 2009 Letter is attached hereto as **(Exhibit I)** and incorporated herein.

COUNT I

BREACH OF CONTRACT

(All Defendants)

92. Plaintiff realleges and incorporates the foregoing allegations in the Complaint as if fully set forth herein.

93. Plaintiff and Defendants entered into a variety of agreements, as set forth more fully above.

94. Defendants breached all of the agreements.

WHEREFORE, based upon the foregoing, Plaintiff's pray for judgment against Defendants, as follows:

A. For such actual and consequential damages as may be proved at the time of trial;

1 B. For Plaintiff's taxable costs and reasonable attorneys' fees pursuant to A.R.S. §
2 12-341.01 and the actual documents.

3 C. And for such other and further relief as this Court deems just and equitable.
4

5 **COUNT II**

6 **VIOLATION OF THE ARIZONA CONSUMER FRAUD ACT**

7 **(All Defendants)**

8 95. Plaintiff realleges and incorporates the foregoing allegations in the Complaint as
9 if fully set forth herein.
10

11 96. The Defendants' above-described actions constitute violations of the Arizona
12 Consumer Fraud Act, A.R.S. §§ 44-1521, *et seq.* ("ACFA").

13 97. As a result of the Defendants' violations of the ACFA, the Plaintiff suffered
14 damages in an amount to be determined by this Court.

15 98. Defendants made all the misrepresentations described above with the intent and
16 purpose of inducing Plaintiff into signing an agreement for refinancing and did not provide the
17 appropriate closing documents required by Arizona and Federal law.
18

19 99. The Plaintiff was unaware that the representations described above were false.

20 100. The Plaintiff acted in reasonable reliance on the representations to his detriment.

21 101. The above acts by Defendants constitute consumer fraud in violation of Arizona
22 Consumer Fraud Act, A.R.S. §§ 44-1521 *et seq.*

23 102. In violating the ACFA, the Defendants acted with an evil mind, intending to
24 injure the Plaintiff or consciously disregarding the substantial risk that their conduct would
25 cause significant harm to the Plaintiff.
26

1 103. The Plaintiff is therefore entitled to recover actual and punitive damages

2 104. WHEREFORE, the Plaintiff prays that this Court award them:

- 3 a. Actual, consequential, incidental, and punitive damages;
- 4 b. Attorneys' fees pursuant to A.R.S. § 12-341.01:
- 5 c. Costs;
- 6 d. All applicable interest; and,
- 7 e. Such other relief as this Court deems just and equitable.

9 **COUNT III**

10 **(TRUTH IN LENDING ACT, 15 U.S.C. § 1601 et seq.)**

11 **(All Defendants)**

12

13 105. Plaintiff repeats, re-alleges, and incorporates by reference the foregoing

14 paragraphs.

15

16 106. Defendants failed and refused to give a copy of their alleged assignment of the

17 Deed of Trust to Plaintiff. Defendants have transferred title of their real property to an

18 unknown to Plaintiff party.

19 107. Defendants materially violated TILA 15 U.S.C. § 1635 and Regulation Z §

20 226.18 which require a creditor to disclose among other things, Annual Percentage Rate

21 calculated using the methods prescribed in the Regulation Z, the amount financed, and the total

22 finance charge.

23

24 108. Defendants violated the TILA 15 U.S.C. § 1635 and Regulation Z § 226.23

25 which require a creditor to give the notice of right of rescission to the consumer.

26

1 109. Defendants all have violated TILA 15 U.S.C. § 1635 (b), which require the
2 creditor to void within 20 days, the security interest (Deed of Trust) on the refinance part of the
3 transaction, apparently all of it per the Recorded Deed of Trust document.

4 110. Defendants all have violated TILA 15 U.S.C. § 1635 (b), which require the
5 creditor failed within 20 days to refund the interest and fees paid by Plaintiff, on the refinance
6 part of the transaction, apparently all of it per the Recorded Deed of Trust document.

7 111. Defendants may have violated other provisions of TILA. This allegation will be
8 supplemented after discovery.

9 112. Defendants may have violated other statutes and regulations. This allegation will
10 be supplemented after discovery.

11 113. Had Defendants made the full disclosure as required by TILA, Plaintiff would
12 not have entered into the unconscionable financing arrangement.

13 114. Plaintiff has been harmed and suffered actual damages proximately caused by
14 the conduct of Defendants.

15 WHEREFORE, Plaintiff requests that judgment be entered against Defendants as
16 follows:

17 A. Judgment canceling or rescinding the contract and restoring the parties to the status
18 quo ante;

19 B. Plaintiff be awarded actual damages suffered as a result of Defendants' conduct;

20 C. Judgment for Plaintiff's attorneys' fees and costs;

21 D. Interest on the judgment rendered herein at the maximum lawful rate from the
22 date of its rendition until paid in full; and

23 E. Such other and further relief as this Court deems just and proper.
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COUNT IV

(HOME OWNERSHIP AND EQUITY PROTECTION ACT, 15 U.S.C. § 1639)

(All Defendants)

115. Plaintiff repeat, re-allege and incorporate by reference the foregoing paragraphs.

116. The transaction described above is actually a HOEPA mortgage as defined in 15 U.S.C. § 1602(aa).

117. Defendants violated the disclosure requirements for a HEOPA mortgage as set forth in 15 U.S.C. § 1639(a).

118. Defendants violated 15 U.S.C. § 1639(h) which prohibits a creditor from engaging in a pattern or practice of extending such credit to a consumer based on the consumer's collateral if, considering the consumer's current and expected income, current obligations, and employment status, the consumer will be unable to make the scheduled payments to repay the obligation.

119. Plaintiff has been harmed and suffered actual damages proximately caused by the conduct of Defendants.

120. Defendants knew or should have known about Defendants' failures to comply with the TILA and HOEPA.

121. Defendants are liable for Plaintiff's claims arising out of Defendants' failure to comply with the TILA and HOEPA.

122. WHEREFORE, Plaintiff request that judgment be entered against Defendants as follows:

- 1 A. Judgment canceling or rescinding the contract and restoring the parties to
2 the status quo ante;
3 B. Restore ownership and title of the subject property to Plaintiff;
4 C. Judgment that Plaintiff be awarded actual damages suffered as a result of
5 Defendants' conduct;
6 D. Judgment for Plaintiff's attorneys' fees and costs;
7 E. Such other and further relief as this Court deems just and proper.
8
9

10 **COUNT V**

11 **(QUIET TITLE, A.R.S. § 12-1101, et seq.)**

12 **(All Defendants)**

- 13
14 123. Plaintiff repeat, re-allege and incorporates by reference the foregoing paragraphs.
15 124. Plaintiff is credibly informed and believes that Defendants make some claim
16 adverse to Plaintiff.
17 125. The Defendants allege that they are the holder and owner of the Promissory Note
18 and Deed of Trust on the Property.
19 126. The attached Deed of Trust does not identify servicer Kondaur as the Real Party of
20 Interest.
21 127. There is no reference to the Defendant debt collector Kondaur Capital Corporation
22 in the recorded chain of title or interest.
23 128. No Real Party of Interest is before this court, except Plaintiff.
24 129. No Defendant whatsoever is a Holder in Due Course in the transaction.
25 130. There is no proof of any Chain of Title by a Holder in Due Course.
26

1 131. Chain of Title as of this date is unrecorded, deficient, and illegal.

2 132. WHEREFORE, Plaintiff requests that judgment be entered against Defendants as
3 follows:

- 4 b. Judgment establishing Plaintiff's estate as described above;
5
6 c. Judgment barring and forever estopping Defendants from having or
7 claiming any right or title to the premises adverse to Plaintiff;
8
9 d. Judgment for Plaintiff's attorneys' fees and costs;
10
11 e. Such other and further relief as this Court deems just and proper.

12 **COUNT VII**

13 **VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT**

14 **(All Defendants)**

15 133. Plaintiff repeats, reallege, and incorporates by reference the foregoing paragraphs.

16 134. All Defendants, including Kondaur, Folks and O'Connor are debt collectors under
17 15 U.S.C. § 1692(a)(6).

18 135. The Plaintiff is consumer under the FDCPA.

19 136. Defendant Kondaur, sent a letter to Plaintiff on June 31st, 2009, identifying
20 themselves as Debt collectors and gave some of the appropriate notices under the
21 FDCPA, including allowing the Plaintiff the ability to dispute the debt and request
22 verification of the debt.

23
24 137. On or about August 17th, 2009, the Plaintiff wrote that dispute letter and requested
25 verification of the debt.
26

1 138. According to the Fair Debt Collection Practices Act, 15 U.S.C. § 809(b), "if the
2 consumer notifies the Debt Collector in writing within the thirty-day period [of
3 receiving the initial communication], that the debt, or any portion thereof is
4 disputed, or that the consumer request the name and address of the original
5 creditor, the DEBT COLLECTOR SHALL CEASE COLLECTION OF THE
6 DEBT OR ANY DISPUTED PORTION THEREOF, UNTIL THE DEBT
7 COLLECTOR OBTAINS VERIFICATION OF THE DEBT...."

9 139. Despite the written request, the proper action was never taken by Kondaur, Folks
10 & O'Connor, nor any other Defendants.

11 140. Kondaur has failed and refused to stop collection of the debt.

12 141. Folks and O'Connor has failed and refused to stop collection of the debt.

13 142. M & I Bank has failed and refused to stop collection of the debt.

14 143. All other Defendants corporate and individual have failed and refused to stop
15 collection of the debt.

16 144. WHEREFORE, Plaintiff request that judgment be entered against Defendants as
17 follows:

- 18
19 a. Judgment establishing violation of the Fair Debt Collection Practices Act;
20 b. Judgment for Plaintiff's attorneys' fees and costs;
21 c. Such other and further relief as this Court deems just and proper.
22

23
24 **COUNT VIII**

25 **VIOLATION OF ARIZONA ASSIGNMENT AND SATISFACTION OF**
26 **MORTGAGE LAW AND INVALID DEED OF TRUST**

(All Defendants)

145. Plaintiff repeats, re-alleges, and incorporates by reference the foregoing paragraphs.

146. There is no proof of any assignment, trust, or successor interest by a Holder in Due Course.

147. M & I's Assignment of Trustee and Notice of Trustee Sale was deviously recorded after the TILA § 1635 Rescission causing the source document, the Deed of Trust to void for assignment or Trustee's sale.

148. The loan was in default at the time of the alleged transfer.

149. The loan was rescinded at the time of the alleged transfer and recorded notice.

150. The Deed of Trust is being held after the alleged "sale" to the assignee to the trust.

151. Kondaur Capital Corporation cannot take an equitable assignment of a Deed of Trust because it is not a Holder in Due Course.

152. No other Defendant listed here can take an equitable assignment of a Deed of Trust when it is not a Holder in Due Course.

153. A.R.S. § 33-420(A), states that [a] person purporting to claim an interest in, or a lien or encumbrance against, real property, who causes a document asserting such claim to be recorded in the office of the county recorder, knowing or having reason to know that the document is forged, groundless, contains a material misstatement or false claim or is otherwise invalid is liable to the owner or beneficial title holder of the real property for the sum of not less than five thousand dollars, or for treble the actual damages caused by the recording, whichever is greater, and reasonable attorney fees and costs of the action.

1 154. Arizona Law requires that no estate shall be conveyed unless the conveyance is
2 by an instrument in writing, subscribed and delivered by the party disposing of the estate.

3 155. Every deed or conveyance of real property must be signed by the grantor and
4 must be duly acknowledged before some officer authorized to take acknowledgments.
5

6 156. A party causing an invalid document to be recorded must know or have reason to
7 know under A.R.S. § 33-420 that the document is invalid.

8 157. It would be impossible, under the circumstances of this and thousand of other
9 cases across the country, in which the Defendants have been judicially estopped from moving
10 forward with Foreclosure or Trustee sales, based upon their inability to show that they are the
11 true beneficiary/owner under the Deed of Trust, to state that the Defendants did not know or
12 have reason to know that the post-rescission Substitution of Trustee and Notice of Trustee Sale
13 were invalid on their face.
14

15 158. Real Chain of Title as of this date is unrecorded, deficient, and illegal per
16 Defendant Kondaur's own admission letter. (EXHIBIT H).

17 159. Chain of Title is not complete, nor can it ever be due to a lack of a Holder In Due
18 Course. All actions in default and dishonor were knowingly and intentionally entered into by
19 Defendant buyers.
20

21 WHEREFORE, Plaintiff requests that judgment be entered against Defendants as follows:

- 22 a. Judgment ordering that the Trustee Sale be cancelled immediately;
23 b. Judgment barring and forever estopping Defendants from having or
24 claiming any right or title to the Property adverse to Plaintiff;
25 c. Judgment for Plaintiff's attorneys' fees and costs;
26 d. Such other and further relief as this Court deems just and proper.

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COUNT IX

(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)

(All Defendants)

160. Plaintiff repeats, re-alleges, and incorporates by reference the foregoing paragraphs.
161. Defendants' actions described above were extreme and outrageous.
162. Defendants either intended to cause Plaintiff emotional distress or recklessly disregarded the near certainty that such distress would result from their conduct.
163. Plaintiff sustained severe emotional distress as a result of defendants' conduct.
164. Defendants conspired to act in a manner, which caused Plaintiff's emotional distress.
165. Defendants conspired to coerce him into relinquish his claims and his equity.

WHEREFORE, Plaintiff request that judgment be entered against Defendants, jointly and severally, as follows:

- a. Judgment that Plaintiff be awarded general damages suffered as a result of Defendants' conduct;
- b. Punitive damages as appropriate to punish and deter Defendants from engaging in similar conduct in the future;
- c. Judgment for Plaintiff's attorneys' fees and costs;
- d. Interest on the judgment rendered herein at the maximum lawful rate from the date of its rendition until paid in full; and
- e. Such other and further relief as this Court deems just and proper.
- 25
- SCANNED

1
2 **COUNT X**

3 **FRAUD – MISREPRESENTATION AND CONSPIRACY**

4 **(ALL DEFENDANTS)**

5
6 166. Plaintiff realleges and incorporates by reference all prior paragraphs as if fully
7 set forth herein.

8 167. Defendants made certain representations and omissions to Plaintiff, including,
9 but not limited to those set forth more fully above.

10
11 168. The representations and omissions above, among others, were false.

12 169. The representations and omissions above, among others, were material, among
13 other things, to Plaintiff.

14 170. Defendants made these and other representations and omissions with knowledge
15 of their falsity.

16
17 171. Defendants made these representations and omissions to induce Plaintiff to enter
18 into business with Plaintiff.

19 172. Defendants worked together to overwhelm Plaintiff with unconscionable actions,
20 threats, ignoring of known laws, false information, and false letters to weary Plaintiff's resolve
21 to rectify these misrepresentations, frauds, and regulatory violations.

22 173. Plaintiff was not aware that Defendants' representations and omissions were
23 false.

24 174. Plaintiff relied on the truth of Defendants' representations and omissions.
25
26

1 175. Plaintiff had no reason to question the truth of Defendants' representations and
2 omissions.

3 176. Plaintiff has been injured by Defendants' misrepresentations in an amount to be
4 proven at trial.

5 A. For such actual, consequential and punitive damages as may be proved at the
6 time of trial;

7 B. For Plaintiff's taxable costs and reasonable attorneys' fees pursuant to A.R.S.
8 § 12-341.01;

9 C. For costs of collection after judgment; and

10 D. Such other and further relief as the Court deems just and necessary.
11
12

13 **COUNT XI**

14 **CONVERSION/CIVIL THEFT**

15 **(All Defendants)**

16
17 177. Plaintiff realleges and incorporates by reference all prior paragraphs as if fully
18 set forth herein.

19 178. Defendants have intentionally seized, held, or otherwise interfered with
20 Plaintiff's beneficial use of his Property without legal justification or privilege.

21 179. By their conduct, Defendants have converted the property of Plaintiff for their
22 own use, or they hold the property for the beneficial use of some third party unknown to
23 Plaintiff.
24
25
26

1 180. Defendants' actions have proximately caused Plaintiff to suffer immediate and
2 irreparable harm for the loss of its rightful property, among other elements of economic injury
3 and harm.

4 181. Defendants' actions were deliberate, harmful, wanton and in bad faith, and such
5 conduct supports an award of punitive damages.
6

7 182. Unless Defendants are enjoined from future acts of theft and conversion, Plaintiff
8 will be irreparably harmed.

9 WHEREFORE, based upon the foregoing, Plaintiff prays for judgment against
10 Defendants, as follows:

11 A. For such actual, consequential and punitive damages as may be proved at the
12 time of trial;

13 B. For Plaintiff's taxable costs and reasonable attorneys' fees pursuant to A.R.S.
14 § 12-341.01;

15 C. For costs of collection after judgment.
16

17 **COUNT XII**

18 **VIOLATION OF THE UNIFORM COMMERCIAL CODE**

19 **AS DEFINED IN A.R.S. §47-3100, §47-3302, et. al. and ARIZONA'S RECORDING**

20 **STATUTE**

21 **(All Defendants)**

22
23 183. Plaintiff realleges and incorporates by reference all prior paragraphs as if fully
24 set forth herein.
25
26

184. The promissory note referred to in the Deed of Trust, in the Substitution of Trustee and the Notice of Trustee's Sale, is a negotiable instrument, governed by A.R.S. §47-3104(a), (b) and (c).

186. Defendants lacking Holder in Due Course status are not entitled to enforce the Deed of Trust, and, therefore, cannot legally go forward with the Trustee Sale in any form.

188. The Chain of Title is irrevocably breached by the lack of a good-faith, Holder in Due Course in this transaction.

- A. Cancellation of the Trustee Sale;
- B. For such actual, consequential, and punitive damages as may be proved at the time of trial;
- C. For Plaintiff's taxable costs and reasonable attorneys' fees pursuant to A.R.S. § 12-341.01;
- D. For costs of collection after judgment.

CIVIL RICO

(All Defendants)

1 189. Plaintiff realleges and incorporates by reference all prior paragraphs as if fully
2 set forth herein.

3 190. Defendants and their DOE agents are "persons" as defined by Statute.

4 191. The conspiracy, the subject of this action, has existed from circa November
5 2006 to the present, with the injuries and damages resulting therefrom being continuing.
6

7 192. Defendants' actions and use of multiple corporate entities, multiple parties, and
8 concerted and predetermined acts and conduct specifically designed to defraud Plaintiff
9 constitutes an "enterprise", with the aim and objective of the enterprise being to perpetrate a
10 fraud upon the Plaintiff through the use of intentional nondisclosure, material
11 misrepresentation, and creation of incomplete and fraudulent loan documents.
12

13 193. Each of the Defendants is an "enterprise Defendant".

14 194. As a direct and proximate result of the actions of the Defendants, Plaintiff has
15 and continues to suffer damages.
16

17 SUMMARY OF PLAINTIFF'S CAUSES OF ACTION

18 195. Plaintiff's main causes are as follows.

- 19
- 20 A. Defendants violated several regulatory laws with impunity
21 over a course of years to date
 - 22 B. Defendants attempted to cover up these violations with more
23 violations of R.E.S.P.A. and F.D.C.P.A. law and Arizona's
24 non-judicial Foreclosure process.
 - 25 C. A newer Defendant, Kondaur knew of these regulatory
26 violations, disputes, defects, misrepresentations, and frauds

1 upon the Plaintiff. Yet, to aid & abet original Defendant legal
2 dilemma and to profit well from them, went ahead and
3 purchased the Note anyway, so as to profit directly from the
4 reduced principle.

5
6 D. Defendants admittedly in their June 4th, 2009 letter, have
7 knowledge of actual buyers, Defendants Kondaur Venture X,
8 LLC and Kondaur Capital Trust Series 2009-3 who are not
9 recorded in the Chain of Title on the Deed of Trust.

10 E. Because of break in the Chain of Title, any attempted
11 foreclosure by later Defendants on a faulty assignment is
12 fraud, illegal, conspiratorial, completely destroying Plaintiff's
13 property and peace.

14
15 F. These later Defendants cannot buy faulty notes, then claim to
16 be Holders in Due Course, per Arizona's U.C.C statutes
17 forbidding it.

18 G. Since none of the Defendants is a Holder in Due Course, none
19 of them are a Real Party of Interest in this transaction, and
20 title need to be permanently quieted against them.
21

22
23 **Request for Emergency Temporary Restraining Order, Preliminary and Permanent**
24 **Injunction**

25 196. Plaintiff realleges and incorporates by reference all prior paragraphs as if fully
26 set forth herein.

1 197. Plaintiff has learned that Defendants, their directors, officers, agents,
2 employees, attorneys and other persons in active concert with them or who are acting under
3 their direction, have been transferring and disposing of Plaintiff's property.

4 198. Unless Defendants, their directors, officers, agents, employees, attorneys and
5 any person in active concert with them or who are acting under their direction, are immediately
6 enjoined from making further improper disposition or use of the Property, and going forward
7 with an illegal Trustee Sale, Plaintiff will be irreparably harmed and suffer injury.

8 199. Plaintiff has no adequate remedy at law to prevent further improper transfer, use
9 or other disposition of the Property.

10 WHEREFORE, based upon the foregoing, Plaintiff asks for the following relief:

11 A. For a temporary order and order to show cause against all Defendants, their
12 officers, directors, agents, employees, attorneys and any person in actual concert with them or
13 who are acting under their direction, are immediately and temporarily enjoined for the time
14 period allowed under Rule 65, Ariz. R. Civ. P., from:

15 1. Transferring or otherwise disposing of the Property, as defined in the Verified
16 Complaint;

17 2. Going forward with the Trustee Sale, scheduled for September 9th, 2009; and

18 3. Such other and further relief as this court deems just and necessary; and

19 4. An order disqualifying Folks and O'Connor from representing any party
20 adverse to the Plaintiff, and,

21 5. An order cancelling the current Notice of Trustee Sale and post-rescission
22 Substitution of Trustee involving Folks and O'Connor PLLC.
23
24
25
26

1 B. For a preliminary/permanent injunction against all Defendants, their officers,
2 directors, agents, employees, attorneys and any person in actual concert with them or who are
3 acting under their direction, are immediately and temporarily enjoined for the time period
4 allowed under Rule 65, Ariz. R. Civ. P., from:

- 5
- 6 1. Transferring or otherwise disposing of the Property, as defined in the Verified
7 Complaint;
- 8 2. Going forward with the Trustee Sale, scheduled for September 9th, 2009; and
9 3. Such other and further relief as this court deems just and necessary.

10 DATED this 8 day of September 2009.

11
12 By. 

13 James McKinney
14 Plaintiff Pro Per
15 618 S. Wickiup Road
16 Apache Junction, Arizona 85119
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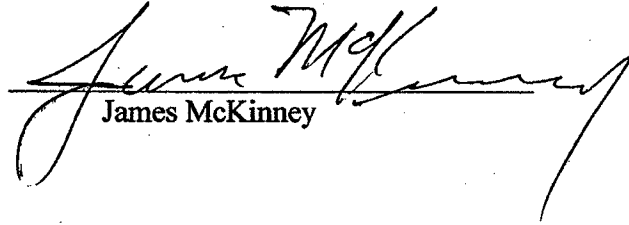
SCANNED

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VERIFICATION

I, James McKinney, under penalty of perjury, state, that I am a party to the above-entitled litigation, that I have read the attached Verified Complaint and know the contents therein, and the matters and things stated therein, are true and correct to the best of my knowledge, information and belief.

DATED this 8 day of September 2009.


James McKinney

SCANNED

VERIFIED COMPLAINT

EXHIBIT "A"

SCANNED

CHICAGO TITLE INSURANCE COMPANY

Return To:
M&I Bank FSB
ATTN Final Documentation Dept.
P. O. Box 478
Milwaukee, WI 53201-0478



OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
LAURA DEAN-LYTLE

DATE/TIME: 02/09/07 1207
FEE: \$28.00
PAGES: 19
FEE NUMBER: 2007-017572

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DEED OF TRUST

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

- (A) "Security Instrument" means this document, which is dated February 07, 2007 together with all Riders to this document.
(B) "Borrower" is James H McKinney, an unmarried man

Borrower is the trustor under this Security Instrument. Borrower's mailing address is 618 South Wickiup, Apache Junction, AZ 85219
(C) "Lender" is M&I Marshall & Ilsley Bank

Lender is a Corporation
organized and existing under the laws of the State of Wisconsin

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McKinney, J

ARIZONA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3003 1/01 (rev. 6/02)

VMP-6(AZ) (0208)

Page 1 of 15

Initials: [Signature]

VMP MORTGAGE FORMS - (800) 521-7291

SCANNED

Lender's mailing address is 770 N Water Street
Milwaukee, WI 53202

Lender is the beneficiary under this Security Instrument.

(D) "Trustee" is CHICAGO TITLE INSURANCE COMPANY.

2500 S POWER RD STE 101, MESA, AZ 85209

Trustee's mailing address is

(E) "Note" means the promissory note signed by Borrower and dated February 07, 2007

The Note states that Borrower owes Lender Four Hundred Eight Thousand Four Hundred Fifty-Eight and 0/100ths Dollars

(U.S. \$408,458.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than March 01, 2037

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- | | | |
|---|---|---|
| <input checked="" type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> Balloon Rider | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> 1-4 Family Rider |
| <input type="checkbox"/> VA Rider | <input type="checkbox"/> Biweekly Payment Rider | <input type="checkbox"/> Other(s) [specify] |

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to

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McKinney, J

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Initials

Form 3003 1/01 (rev. 6/02)

SCANNED

time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the
County of Pinal :

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

PARCEL A, OF RECORD OF SURVEY, RECORDED IN BOOK 17 OF SURVEYS, PAGE 041 AND BOOK 17 OF SURVEYS, PAGE 205, RECORDS OF PINAL COUNTY, ARIZONA BEING THE NORTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 1 NORTH, RANGE 8 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, PINAL COUNTY, ARIZONA; EXCEPT ALL THE COAL, OIL, GAS AND OTHER MINERAL DEPOSITS AS RESERVED UNTO THE UNITED STATES OF AMERICA IN THE PATENT TO SAID LAND.

Parcel ID Number: 103-04-05706 (covers more)

which currently has the address of

Parcel 103-04-057A

[Street]

Apache Junction

[City], Arizona 85219-0000 [Zip Code]

("Property Address"):

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items
xxxxx2154
McKinney, J

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Initialed

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SCANNED

pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be

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McKinney, J

in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the

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lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with

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the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable

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attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

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(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

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12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

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16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA

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requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicers and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

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Form 3003 1/01 (rev. 6/02)

SCANNED

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. **Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall give written notice to Trustee of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee shall record a notice of sale in each county in which any part of the Property is located and shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the other persons prescribed by Applicable Law. After the time required by Applicable Law and after publication and posting of the notice of sale, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder for cash at the time and place designated in the notice of sale. Trustee may postpone sale of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it or to the county treasurer of the county in which the sale took place.

23. **Release.** Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. **Substitute Trustee.** Lender may, for any reason or cause, from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

25. **Time of Essence.** Time is of the essence in each covenant of this Security Instrument.

xxxx2154

Page 13 of 15

Initials

McKinney, J

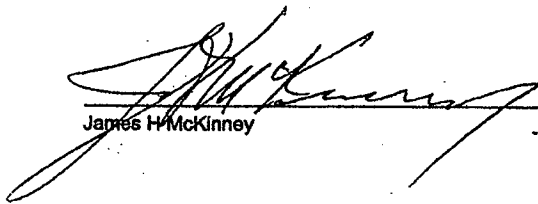
Form 3003 1/01 (rev. 6/02)

UIMP-6(AZ) (0208)

SCANNED

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

_____	 James H. McKinney (Seal) -Borrower
_____	_____ (Seal) -Borrower
_____ (Seal) -Borrower	_____ (Seal) -Borrower
_____ (Seal) -Borrower	_____ (Seal) -Borrower
_____ (Seal) -Borrower	_____ (Seal) -Borrower

STATE OF Arizona, Maricopa

Maricopa County ss:

The foregoing instrument was acknowledged before me this February 07, 2007
by James H McKinney .

My Commission Expires:



[Signature]

Notary Public

VERIFIED COMPLAINT

EXHIBIT "B"

SCANNED

NOTICE OF LOAN RESCISSION

James McKinney
618 S. Wickiup Road
Apache Junction, AZ 85219
June 4, 2009

M & I Marshall and Ilsley Bank
Post Office Box 3203
Milwaukee, WI 53201-3203

Re: Account #: 00035662154-40000 hereinafter "Loan"* dated February 7, 2007

Please Note. I rescind this loan without reservation.

Also for more detail:

- I have conducted a reasonable investigation and inquiry into this matter and concluded that Marshall and Ilsley Bank, et. al, the originator(s) of this transaction, failed to provide all material disclosures correctly made as that term is defined and under 15 U.S.C. § 1635(a); Reg. Z §§ 226.23(a) in a form that I may keep. The notices were ineffective, failed to provide the requisite number on the Refinance part of this transaction. This part of the transaction is subject to the unconditional right to rescind within three days which has not yet begun to run due to your failure to provide effective notice of my right to cancel.

I am rescinding this loan for the total of mis-allocated fees, a "material" basis to rescind under Reg. Z § 226.23. Tolerance for Disclosures.

- I am rescinding this loan within my extended rescission rights, as noted in *Gaona v. Town & Country Credit*, 324 F.3d 1050, 1053 (8th Cir. 2003); *England v. MG Investments, Inc.*, 93 F. Supp. 2d 718 (S.D. W. Va. 2000); *Williams v. Gelt Financial Corp.*, (In re Williams), 232 B.R. 629 (Bankr. E.D. Pa. 1999) aff'd, 237 B.R. 590 (E.D. Pa. 1999).

- I/We rescind as well, for Arizona U.D.A.P. violations by the originating "broker"/banker(s). *Parks v. Marco-Dynamics Inc.* 121 Ariz. 517, 591 P.2d 1005.

R.E.S.P.A. requirements designed to protect the consumer were also violated as more continuing Arizona Unfair and Deceptive Acts and Practices by the originators and/or servicers, to my needless detriment and economic loss. Perhaps in discovery, these U.D.A.P. acts may have been duplicated in other states as well.

I respectfully demand that you void your foreclosure, as you have no security basis on my property after rescission. "Within 20 calendar days after receipt of a notice of rescission, the creditor shall...take any action necessary to reflect the termination of the security interest." - 15 U.S.C. § 1635(b).

Once the Consumer rescinds, the security interest arising by operation of law becomes void automatically. The promissory note is also voided since it is part of the same "transaction," see i.e., 15 U.S.C. § 1635(b) and Reg. Z § 226.23(d)(1).

Sincerely,


James McKinney

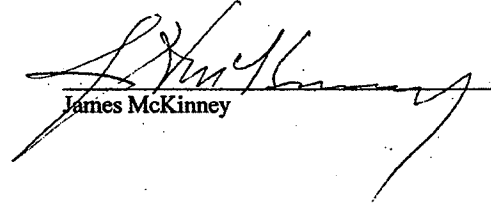
Attachments

SCANNED

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished by certified U.S. Mail on this 4 day of JUN, 2009 to:

Certified Mail Return Receipt # 7007 3020 0002 9337 9316
M & I Marshall and Ilsley Bank
Post Office Box 3203
Milwaukee, WI 53201-3203


James McKinney

SCANNED

CHICAGO TITLE INSURANCE COMPANY

Return To:
M&I Bank FSB
ATTN Final Documentation Dept.
P. O. Box 478
Milwaukee, WI 53201-0478



OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
LAURA DEAN-LYTL

DATE/TIME: 02/09/07 1207
FEE: \$28.00
PAGES: 19
FEE NUMBER: 2007-017572

Prepared By:

Lorann J. Ten Haken
Vice President
M&I Bank FSB

REFINANCE

2700571.06 [Space Above This Line For Recording Data]
DEED OF TRUST

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated February 07, 2007 together with all Riders to this document.

(B) "Borrower" is James H McKinney, an unmarried man

Borrower is the trustor under this Security Instrument. Borrower's mailing address is 618 South Wickup, Apache Junction, AZ 85219

(C) "Lender" is M&I Marshall & Ilsley Bank

Lender is a Corporation organized and existing under the laws of the State of Wisconsin

xxxx2154

McKinney, J

ARIZONA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3003 1/01 (rev. 6/02)

1/24/06 -6 (AZ) (0206)

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Initials

VMP MORTGAGE FORMS - (800)521-7281

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VERIFIED COMPLAINT

EXHIBIT "C"



[HOME](#) [SERVICES](#) [ABOUT US](#) [LOAN SERVICES](#) [BORROW](#)

Welcome to Kondaur Capital Corporation

Kondaur Capital Corporation is the only premier purchaser of Scratch & Dent residential mortgage loans. Kondaur maximizes its bids through its unique management, servicing and liquidation strategies.

~~any type of one-to-four family residential loans whatsoever~~

"Story" loans

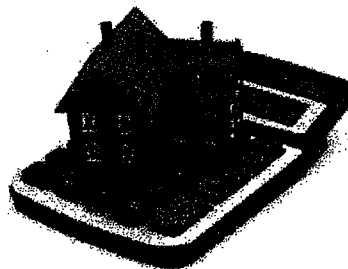
Hyper-defaulted loans

Loans secured by unique properties

~~Loans with origination fraud~~

~~Loans with regulatory violations~~

Loans rejected for investor purchase



KONDAUR WILL BID ON A SINGLE LOAN ON A ONE TIME BASIS OR ON A POOL OF LOANS. KONDAUR WILL GIVE LOAN LEVEL PRICING ON WHICH A SELLER MAY "CHERRY PICK" LOANS TO SELL.

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EXHIBIT "D"

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Kondaur News

Kondaur News

Scratch-and-Dent Loan Market Offers Outlet

MBA Newslink Volume 7, Issue 69

By Vijay Palaparty

While scratch-and-dent loans accumulate and restrict cash, loan sellers now have the option of turning to an emerging market of loan buyers who offer liquidation. Sale of such loans provides refinance or resale opportunities, sometimes also ending in foreclosure.

"What drives the scratch and dent market is the seller of the loan who has a need for liquidity; otherwise the seller would not sell the loan at a discount," said Jon Daurio, chairman and CEO of Kondaur Capital Corp., Santa Ana, Calif.

Daurio said a loan is scratch-and-dent for any of the following three reasons: loan performance — ~~the loan is either in default or was previously in default, a loan where a regulation was violated in the origination process, or for underwriting reasons that involve fraud~~

Companies such as Kondaur Capital have entered the market, buying loans at huge discounts with the potential of repackaging and selling the loans.

"The process involves high-touch due diligence management," Daurio said. "We might refinance or restructure the loans or we may resell them. If it's a nonperforming loan, we may get a died-in-lieu. What we do is characterize borrowers as those who have the ability and desire to pay and stay, those who should sell and go, and those who do nothing."

Daurio said that loan attributes play a significant part in purchasing decisions. From a due diligence

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perspective, the company conducts a two week to four week review of the loans to verify accuracy.

"In the scratch and dent world, most sellers don't have accurate information and many times the information is off," Daurio said. "Factors such as the status of the loan, unpaid balance and collateral values information result in us adjusting our price. Regardless, sellers should be figuring out what is a fair and reasonable amount for these loans."

As homeownership preservation efforts makes headlines, the scratch-and-dent market could make additional progress. "It's a win-win situation," Daurio said. "In the event that we may have to foreclose on a home, it's usually after we make every other effort to keep the borrower in the home. More often than not, the reason is because we can't reach the borrower at all."

"The incredible magnitude of repurchase obligations has led to a liquidity crisis in the mortgage banking industry," Daurio said. "Loan sellers typically do not have sufficient cash to repurchase the loans nor the ability to borrow sufficient cash. As a result, a scratch-and-dent loan buyers will arrange with the loan seller to buy the loan from the loan buyer at less than par, with the loan seller making up the difference. Such differences can and likely will, in the aggregate, amount to billions of dollars."

MBA Newslink Volume 7, Issue 69, Wednesday, April 09, 2008

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EXHIBIT "E"

SCANNED

NOTICE OF ASSIGNMENT, SALE OR TRANSFER OF SERVICING RIGHTS

This notice is to inform you that effective August 16, 2009; the servicing of your mortgage loan is being assigned, sold, or transferred from M&I Marshall & Ilsley Bank, M&I Bank FSB, or Southwest Bank (M&I Bank) to Kondaur Capital Corporation. Servicing is defined as the right to collect payments from you on your mortgage loan.

The assignment, sale or transfer of the servicing of the mortgage loan does not affect any term or condition of the mortgage instruments, other than the terms directly related to the servicing of your loan.

Except in limited circumstances, the law requires that your present Servicer send you this notice at least 15 days before the effective date of transfer or at closing. Your new Servicer must also send you this notice no later than 15 days after this effective date or at closing.

[REDACTED] If you have any questions relating to the transfer of servicing from your present Servicer, call M&I Bank toll free at 1-888-464-5463, available 24 Hours.

[REDACTED] The business address for your new Servicer is 1100 Town & Country Suite 1600, Orange, CA 92868. If you have any questions relating to the transfer of servicing to your new Servicer, please call toll free 1-877-737-8866, Monday through Friday from 8:30 a.m. – 5:30 p.m. PST.

The date that your present Servicer will stop accepting payments from you is August 16, 2009. Effective August 17, 2009, your new Servicer will start accepting payments from you. Begin making your checks payable to Kondaur Capital Corporation and mail your payment to PO Box 1449, Orange, CA 92856-1449.

You should also be aware of the following information, which is set out in more detail in Section 6 of the Real Estate Settlement Procedures Act (RESPA) (12 USC 2605):

During the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old Servicer before its due date may not be treated by the new Servicer as late, and a late fee may not be imposed on you.

Section 6 of RESPA (12 USC 2605) gives you certain consumer rights. [REDACTED] to your loan Servicer concerning the servicing of your loan, your Servicer must provide you with a written acknowledgment within 20 business days of receipt of your request. A "qualified written request" is a written correspondence, other than notice on a payment coupon or other payment medium supplied by the Servicer, which includes your name and account number, and your reasons for the request. Send written requests to 1100 Town & Country Rd, Suite 1600, Orange, CA 92868.

Not later than 60 business days after receiving your request, your Servicer [REDACTED] make any appropriate corrections to your account, and must provide you with a written clarification regarding any dispute. During the 60-business-day period, your Servicer may not provide information to a consumer reporting agency concerning any overdue payment related to such period or qualified written request, however, this does not prevent the Servicer from initiating foreclosure if proper grounds exist under the mortgage documents.

A business day is a day on which the offices of the business entity are open to the public for carrying on substantially all of its business functions.

Section 6 of RESPA also provides for damages and costs for individuals or classes of individuals in circumstances where Servicers are shown to have violated the requirements of that Section. You should seek legal advice if you believe your rights have been violated.

M&I Bank	July 31, 2009
Present Servicer	Date
Kondaur Capital Corporation	July 31, 2009
Future Servicer	Date

VERIFIED COMPLAINT

EXHIBIT "F"

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Frequently Asked Questions**General Information Name Search****44 Matches found**

* Required Field

* Entity Name: or File Number:

This field is not case sensitive.

Search

FILE NUMBER	ENTITY NAME
4376689	KONDAUR CAPITAL CORPORATION
4205358	KONDAUR CAPITAL, LLC
4626979	KONDAUR CAPITAL TRUST SERIES 2008-1
4636981	KONDAUR CAPITAL TRUST SERIES 2008-2
4638978	KONDAUR CAPITAL TRUST SERIES 2008-3
4687885	KONDAUR CAPITAL TRUST SERIES 2009-1
4715615	KONDAUR CAPITAL TRUST SERIES 2009-3
4547551	KONDAUR VENTURES II B1, L.L.C.
4566453	KONDAUR VENTURES III B1, L.L.C.
4566448	KONDAUR VENTURES III, L.L.C.
4566455	KONDAUR VENTURES III OFFSHORE, L.L.C.
4566449	KONDAUR VENTURES III OFFSHORE REO 1, L.L.C.
4545703	KONDAUR VENTURES II, L.L.C.
4549515	KONDAUR VENTURES II OFFSHORE, L.L.C.
4558190	KONDAUR VENTURES II OFFSHORE REO 1, L.L.C.
4530019	KONDAUR VENTURES I, LLC

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4587546	<u>KONDAUR VENTURES IV B1, L.L.C.</u>
4587545	<u>KONDAUR VENTURES IV, L.L.C.</u>
4587547	<u>KONDAUR VENTURES IV OFFSHORE, L.L.C.</u>
4587548	<u>KONDAUR VENTURES IV OFFSHORE REO 1, L.L.C.</u>
4695761	<u>KONDAUR VENTURES IX B1, L.L.C.</u>
4695758	<u>KONDAUR VENTURES IX, L.L.C.</u>
4695769	<u>KONDAUR VENTURES IX OFFSHORE, L.L.C.</u>
4695772	<u>KONDAUR VENTURES IX OFFSHORE REO 1, L.L.C.</u>
4612012	<u>KONDAUR VENTURES V B1, L.L.C.</u>
4634842	<u>KONDAUR VENTURES VI B1, L.L.C.</u>
4637111	<u>KONDAUR VENTURES VII B1, L.L.C.</u>
4682513	<u>KONDAUR VENTURES VIII B1, L.L.C.</u>
4682510	<u>KONDAUR VENTURES VIII, L.L.C.</u>
4682515	<u>KONDAUR VENTURES VIII OFFSHORE, L.L.C.</u>
4682517	<u>KONDAUR VENTURES VIII OFFSHORE REO 1, L.L.C.</u>
4637109	<u>KONDAUR VENTURES VII, L.L.C.</u>
4637115	<u>KONDAUR VENTURES VII OFFSHORE, L.L.C.</u>
4637116	<u>KONDAUR VENTURES VII OFFSHORE REO 1, L.L.C.</u>
4634838	<u>KONDAUR VENTURES VI, L.L.C.</u>
4634846	<u>KONDAUR VENTURES VI OFFSHORE, L.L.C.</u>
4634851	<u>KONDAUR VENTURES VI OFFSHORE REO 1, L.L.C.</u>
4611696	<u>KONDAUR VENTURES V, L.L.C.</u>
4611697	<u>KONDAUR VENTURES V OFFSHORE, L.L.C.</u>
4611699	<u>KONDAUR VENTURES V OFFSHORE REO 1, L.L.C.</u>
4711830	<u>KONDAUR VENTURES X B1, L.L.C.</u>
4711826	<u>KONDAUR VENTURES X, L.L.C.</u>
4711834	<u>KONDAUR VENTURES X OFFSHORE, L.L.C.</u>
4711838	<u>KONDAUR VENTURES X OFFSHORE REO 1, L.L.C.</u>

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VERIFIED COMPLAINT

EXHIBIT "G"

SCANNED

JAMES MCKINNEY
618 S Wickiup Rd
Apache Junction, AZ 85219

NOTIFICATION OF ASSIGNMENT, SALE OR TRANSFER OF YOUR MORTGAGE LOAN

RE: Loan Number - 109147
Property Address: 618 S Wickiup Rd
Apache Junction, AZ 85219

The purpose of this notice is to inform you that, effective August 17 2009, ~~your mortgage loan was assigned, sold or transferred to Kondaur Venture X, LLC and contemporaneously assigned, sold or transferred to Kondaur Capital Trust Series 2009-3.~~ The assignment, sale, or transfer of your loan to Kondaur Venture X, Inc., and contemporaneous assignment, sale or transfer to Kondaur Capital Trust Series 2009-3, does not affect any term or condition of the Mortgage, Deed of Trust or Note and this notice requires no action on your part. If you need to contact these entities, they can be reached at:

Kondaur Venture X, LLC or Kondaur Capital Trust Series 2009-3
c/o Kondaur Capital Corporation
1100 Town & Country Road, Suite 1600
Orange, CA 92868
Attention: Jon Daurio, CEO
1-888-566-3287, ext. 2052

~~The above described transfers of ownership were not recorded.~~ However, there has been an assignment recorded, or we intend to record an assignment, into the name of the servicer of your loan, Kondaur Capital Corporation. Said recordation was, or is intended to be, in Pinal County, AZ.

If you have any questions relating to the transfers of ownership of your mortgage loan, please contact Kondaur Capital Corporation, the servicer of your mortgage loan and the designated agent for Kondaur Capital Trust Series 2009-3, at the following telephone number, and/or email address:

KONDAUR CAPITAL CORPORATION
Attention: Mike Perry
Toll-free: (877) 737-8866, ext. 2068
mperry@kondaur.com

It is important that you send your monthly payments directly to Kondaur Capital Corporation, the servicer of your mortgage, at the address on your mortgage statement.

Checks should be made payable to Kondaur Capital Corporation. All correspondence and inquiries concerning your mortgage loan should be addressed to Kondaur Capital Corporation.

SCANNED

VERIFIED COMPLAINT

EXHIBIT "H"

SECURITY TITLE AGENCY

When recorded return to:

(13)
Larry O. Folks
FOLKS & O'CONNOR, PLLC
Suite 1140
1850 N. Central Ave.
Phoenix, AZ 85004



**OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
LAURA DEAN-LYTL**

DATE/TIME: 06/05/09 1611
FEE: \$14.00
PAGES: 3
FEE NUMBER: 2069-057607

NOTICE OF TRUSTEE'S SALE

14-83463

Trustee Sale No: McKinney, James H
Loan Number: 098-00035662154-40000

Recorded: June 5, 2009

The following legally described trust property will be sold, pursuant to the power of sale under that certain Trust Deed dated February 7, 2007, and recorded on February 9, 2007 in Instrument Number 2007-017572, Records of Pinal County, Arizona at public auction to the highest bidder at the main entrance to the Pinal County Superior Court Building, 971 North Jason Lopez Circle, Bldg A, Florence, AZ on September 9, 2009 at 9:05AM of said day:

LEGAL:

Parcel A, of record of survey, recorded in book 17 of surveys, page 041 and book 17 of surveys, page 205, records of Pinal County, Arizona being the north half of the northeast quarter of the southeast quarter of the southwest quarter of the southwest quarter of section 22, township 1 north, range 8 east, of the Gila and Salt River Base and Meridian, Pinal County, Arizona; except all the coal, oil, gas and other mineral deposits as reserved unto the United States of American in the patent to said land.

The street address is purported to be:
Parcel # 103-04-057A
Apache Junction, AZ 85219

Tax Parcel Number 103-04-057A
Original Principal Balance \$ 408,458.00

NAME AND ADDRESS OF

Original Trustor

James H McKinney, an unmarried man
618 South Wickiup
Apache Junction, AZ 85219

Current Owner

James H McKinney, an unmarried man
618 South Wickiup
Apache Junction, AZ 85219

Beneficiary

M & I Marshall & Isley Bank
770 North Water Street
Milwaukee, WI 53202

Current Trustee
Larry O. Folks
Suite 1140
1850 N. Central Ave.
Phoenix, AZ 85004

Telephone Number: 602-262-2265
Sales Line: 480-507-1135

Dated June 3, 2009

Signature of Trustee



Larry O. Folks

MANNER OF TRUSTEE QUALIFICATION
a member of the State Bar of Arizona, as required by
A.R.S. Sec. 33-803, Subsection A(2)
Trustee's Regulator: State Bar of Arizona

STATE OF ARIZONA

County of MARICOPA

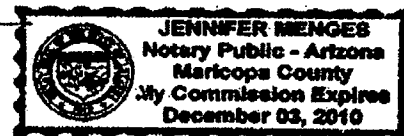
} ss.

On June 5, 2009, before me, the undersigned notary public, personally appeared Larry O. Folks, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument

WITNESS my hand and official seal

My commission expires December 3, 2010


Jennifer Menges
NOTARY PUBLIC



All persons whose interest in the Trust Property is subordinate in priority to that of the above described Deed of Trust may be subject to having such subordinate interest terminated by this Trustee's Sale

The notice contained in this Statement is or may be an attempt to collect a debt, and any information obtained will be used for that purpose.

STATEMENT OF BREACH OR NON-PERFORMANCE

The following Breach or Non-Performance of that certain Deed of Trust recorded under the Trust Deed executed by James H McKinney, an unmarried man, as Trustor(s), in which Chicago Title Insurance Company 2500 S Power Rd STE 101 Mesa, AZ 85209 is named as Trustee, which Trust Deed dated February 7, 2007, and recorded in Pinal County, Arizona, in Instrument Number 2007-017572, (the "Deed of Trust") has occurred.

Failure to make the monthly installment due in the amount of \$2375.76, which became due on 2/01/2009 and all subsequent installments thereafter, along with all costs and fees, together with all other defaults under the Deed of Trust.

The beneficiary in said Deed of Trust has elected to sell or cause to be sold the property described in said Deed of Trust at a Trustee's Sale in compliance with ARS 33-801 ET. SEQ.

The amount of the unpaid principal balance ("the debt") is \$407,272.56 plus interest accruing from the date last paid. The creditor to whom the debt is paid is M & I Marshall & Ilsley Bank. Unless the Debtor notifies the Trustee who is mailing this Notice within 30 days of receiving this notice that they dispute the validity of the debt, or any portion thereof, the Trustee will assume the debt is valid. If the Debtor notifies the trustee in writing within the 30 day period that the debt, or any portion thereof is disputed, the Trustee will obtain a verification of the debt and a copy of such verification will be mailed to the Debtor. If the Creditor named above is not the original Creditor, and if the Debtor makes a written request to the Trustee within 30 days from receipt of this notice, the name and address of the original Creditor will be mailed to the Debtor by this office.

M & I Marshall & Ilsley Bank

By Larry O. Folks

Attorney at Law

By Special Power of Attorney
Pursuant to A.R.S. 33-809(C)

IF YOUR INTEREST IN THE SUBJECT PROPERTY IS JUNIOR AND INFERIOR TO THAT OF THE TRUST DEED BEING FORECLOSED, YOUR INTEREST IN THE TRUST PROPERTY WILL BE TERMINATED BY THE TRUSTEE'S SALE

TS No. McKinney, James H
Loan No. 098-00035662154-40000

VERIFIED COMPLAINT

EXHIBIT "I"

SCANNED

WRITTEN NOTICE OF LOAN DISPUTE

James McKinney
618 S. Wickiup Road
Apache Junction, AZ 85219
August 17th, 2009

Kondaur Capital Corporation
1100 Town & Country, Suite 1600
Orange, CA 92868

Re: Account #: **109147**, formerly #35662154 hereinafter "Loan" dated February 7, 2007.
Fair Credit Reporting Act (aka FCRA), at 15 U.S.C. § 1681 et seq.
Fair Debt Collection Practices Act (aka FDCPA), 15 U.S.C. § 1692 et seq.
Real Estate Settlement Procedures Act, (known as "RESPA"), 12 U.S.C. § 2601-2617.

Dear Kondaur Capital Corporation:

We received your introductory letter & notices dated August 4, 2009. Thank you.

I am responding to your '30 day' legal letter notice, to notify you I have been disputing this contract since June 4th, 2009 as you know, for the following reasons:

I conducted a reasonable investigation and inquiry into this matter and concluded that Marshall and Ilsley Bank, et. al, the originator(s) of this transaction, failed to provide all material disclosures correctly made as that term is defined and under 15 U.S.C. § 1635(a); Reg. Z §§ 226.23(a) in a form that I may keep. The notices were ineffective, failed to provide the requisite number on the refinance part of this transaction. M & I Bank itself labeled this transaction on the Deed of Trust as a "Refinance". Why should I not believe them? This part of the transaction is subject to the unconditional right to T.I.L.A. rescind within three years from three years § 1635(b). The remainder if any of the transaction, is subject to U.D.A.P. and other extended Rescission rights as clarified below.

I am also rescinding this loan for the total of mis-allocated fees, a "material" basis to rescind under Reg. Z § 226.23. Tolerance for Disclosures.

I am rescinding this loan within my **extended rescission rights**, as noted in *Gaona v. Town & Country Credit*, 324 F.3d 1050, 1053 (8th Cir. 2003); *England v. MG Investments, Inc.*, 93 F. Supp. 2d 718 (S.D. W. Va. 2000); *Williams v. Gelt Financial Corp.*, (In re Williams), 232 B.R. 629 (Bankr. E.D. Pa. 1999) aff'd, 237 B.R. 590 (E.D. Pa. 1999).

I/We rescind as well, for Arizona U.D.A.P. violations by the originating "broker"/banker(s).
Parks v. Marco-Dynamics Inc. 121 Ariz. 517, 591 P.2d 1005.

SCANNED

R.E.S.P.A. requirements designed to protect the consumer were also violated as more continuing Arizona Unfair and Deceptive Acts and Practices (UDAP) by the originators and/or servicers, to my needless detriment and economic loss. Perhaps in discovery, these UDAP acts may have been duplicated in other states as well.

M & I has failed to obey 15 U.S.C. § 1635(b), which states: "*Within 20 calendar days after receipt of a notice of rescission, the creditor shall...take any action necessary to reflect the termination of the security interest.*" They are to affirmably initiate court proceedings within those 20 days if they dispute the rescission, which they failed to do.

Once the Consumer rescinds, **the security interest arising by operation of law becomes void automatically.** The promissory note is also voided since it is part of the same "transaction," see i.e., 15 U.S.C. § 1635(b) and Reg. Z § 226.23(d)(1).

This Note - months *before* your August 2009 purchase, and before your August 2009 servicing transfer, was Rescinded without reservation. therefore pursuant to FCRA et. al., **I dispute** any credit reporting on it, as its security interest and terms are utterly void by law, both TILA and UDAP, ab initio.

M & I bank as Servicer and Originator repeatedly failed to follow R.E.S.P.A., T.I.L.A. et. al., and now owes to me against this account:

1. Statutory damages of no less than \$2,000 each for the disclosure violations as provided under 15 U.S.C. § 1640;
2. Statutory damages of \$2,000 for Defendants' failure to respond properly to Plaintiffs' June 4th, 2009 rescission notice;
3. Statutory damages of \$2,000 for **each** of Defendants' **five** separate failures to respond properly to Plaintiffs' five ignored specific 12 USC § 2605 Qualified Written Requests for discovery and loan verification.
4. Statutory damages as provided by state law and the Arizona Consumer Fraud Act (AFCA).

These items' non-payment by M & I, due to their mitigating amounts are disputed as well.

I respectfully demand that you void M & I's illegally initiated foreclosure, as per § 1635(b) you have no security basis on my property after rescission of the refinance section of this loan. The voided Deed of Trust contracted "Refinance" when I was asked to sign it as on the face of the document itself.

Severally, for each of these reasons, this loan is in dispute. In accordance to paragraph 5 of your letter, I am disputing each of these issues within 30 days, in writing.

In violation of FCRA and FDCPA, and in violation of §1635(b), the disputed security-interest based Trustee Sale, was post-rescission **publicly recorded** intentionally by M & I, further damaging my credit. As the new Servicer, please correct this.

SCANNED

I am damaged daily until these are all corrected. Any negative reporting on it by you while it is in dispute will further damage me. Since you are responsible for this account, **please correct these many items immediately.** Thank you.

Sincerely,

James McKinney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished by U.S. Mail on this _____ day of _____, 2009 to:

Express US Mail #EQ 568815360 US
Kondaur Capital Corporation
1100 Town & Country, Suite 1600
Orange, CA 92868

James McKinney

SCANNED

EXHIBIT 15

Filed on 1/26/2010 3:17:58 PM

IN THE SUPERIOR COURT

PINAL COUNTY, STATE OF ARIZONA

Date: 01/26/2010

DOCKETED
JAN 26 2010

THE HON WILLIAM J O'NEIL

Division: 1

By Judicial Assistant: JUDY GOSSMAN

JAMES MCKINNEY)	<u>S1100CV200903764</u>
)	
)	NOTICE
)	
Plaintiff(s),)	
)	
vs.)	RULING ON MOTIONS/ISSUES
)	
KONDAUR CAPITAL CORPORATION, et al.,)	
)	
Defendant(s).)	
)	

A Motion to Dismiss was submitted by Folks & O'Connor PLLC. Plaintiff has not addressed any of the issues raised within the Motion to Dismiss even assuming the allegations contained within the Complaint were true and there has been no sufficient factual allegations to undergird the same. The Court would be required to grant the motion. Now, therefore,

IT IS ORDERED granting the Motion to Dismiss.

Plaintiff attempts to file a Dismissal Without Prejudice based upon incorrect venue for a majority of witnesses and a request to hold this dismissal in abeyance was likewise submitted. Further, as Plaintiff has now apparently attempted to dismiss this action and then reinstituted it in a different county, this Court retains jurisdiction for the order of the payment of costs incurred by the Defendants. However, this Court has not deemed the Motions to Dismiss as summary judgment motions and does deem the matters otherwise dismissed as authorized by Rule 41(A).

Mailed/e-mailed distributed copy: 01/26/2010

JAMES MCKINNEY
618 S WICKIUP RD
APACHE JUNCTION AZ 85119

Filed on 1/26/2010 3:17:58 PM

MARK L COLLINS

LARRY O FOLKS

EXHIBIT 16

JAMES McKINNEY
618 S. WICKIUP ROAD
APACHE JUNCTION, ARIZONA 85119
PRO PER (SELF REPRESENTED LITIGANT)

IN THE SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

JAMES McKINNEY, an individual,
JAMES McKINNEY, an individual,
Real Parties in Interest

Plaintiffs,

vs.

KONDAUR CAPITAL CORPORATION, a
Delaware Corporation; KONDAUR VENTURE
X, LLC; an Delaware LLC; KONDAUR
CAPITAL TRUST SERIES 2009-3, a Delaware
Statutory Trust; DEUTSCHE BANK TRUST
COMPANY DELAWARE, a Delaware
Corporation; PAULA CHASTAIN, an individual;
PETER BAI, an individual; FOLKS AND
O'CONNOR, PLLC, an Arizona LLC;
SECURITY TITLE AGENCY, an Arizona
Corporation; M & I MARSHALL AND
ILSLEY BANK, a Wisconsin Corporation; JOHN
JONES and JANE DOE JONES, husband and
wife, JOHN DOES and JANE DOES I-X;
ABC CORPORATIONS I-V; and XYZ
PARTNERSHIPS I-V; ABC LLCS I-V, XYZ
TRUSTS I-V;

Defendants.

CASE NO. CV2010-090122

COMPLAINT

Quiet Title A.R.S. § 12-1102 et seq.
For lack of valid Holder in Due Course
A.R.S. 47 § 3320
For lack of Real Party in Interest per Rule
17(a)
Breach of Contract
Violation of the Fair Debt Collections
Practices Act (F.D.C.P.A.)
15 U.S.C. § 1692
Violation of AZ Consumer Fraud Act
Violation of Truth in Lending Act
15 U.S.C. § 1601 et. seq.
Violation of Home Ownership and Equity
Protection Act, 15 U.S.C. § 1639

Violation of the Fair Debt Collections
Practices Act
Violation of the Arizona Assignment and
Satisfaction of Mortgage Law
and Invalid Deed of Trust Law
A.R.S. § 33-420 et. seq.
Infliction of Emotional Distress
Fraud – Misrepresentation and Conspiracy
Violation of the Uniform Commercial Code
as defined in A.R.S. § 47-3100
et. seq. and Arizona's Recording
Statute

Plaintiff James McKinney against Defendants, alleges as follows:

THE PARTIES

1. Plaintiff JAMES MCKINNEY is a retired individual, in the State of Arizona at all times relevant to the Complaint. Hereinafter also 'Plaintiff' or 'Consumer'

2. Plaintiff James McKinney is an individual relative of above, in the State of Arizona at all times relevant to the Complaint. Hereinafter also 'Plaintiff' or 'Consumer'

3. Plaintiffs are a "consumer" as defined by TILA, 15 U.S.C. § 1602(h) and Federal Reserve Board Regulation Z, 12 C.F.R. § 226.2(a)(11).

4. Plaintiffs were and are a "least sophisticated consumer" as defined in F.D.C.P.A. court rulings ie Rosenau v. Unifund Corp., 539 F.3d 219, 222.

5. Defendant KONDAUR CAPITAL CORPORATION, is a Delaware Corporation doing business in Arizona;

6. Defendant KONDAUR VENTURE X, LLC, is a Delaware LLC doing unregistered business in Arizona;

7. Defendant KONDAUR CAPITAL TRUST SERIES 2009-3, a Delaware Statutory Trust doing unregistered business in Arizona;

8. Defendant DEUTSCHE BANK TRUST COMPANY DELAWARE, is a Delaware Corporation doing business in Arizona;

9. Defendant PAULA CHASTAIN is an individual involved in this transaction as a debt collector.

10. Defendant PETER BAI is an individual involved in this transaction as a debt collector.

11. Defendant FOLKS AND O'CONNOR, PLLC, is an Arizona LLC doing business in Arizona;

1 12. Defendant SECURITY TITLE AGENCY is an Arizona Corporation doing
2 business in Arizona;

3 13. Defendant M & I MARSHALL AND ILSLEY BANK, is a Wisconsin
4 Corporation doing business in Arizona;

5 14. Defendants set forth above are hereinafter collectively referred to as
6 "Defendants".
7

8 15. Defendants are each a "creditor" as defined in the TILA, 15 U.S.C. § 1602(f) and
9 Regulation Z, 12 C.F.R. § 226.2(a)(17)(i).

10 16. By their own admission, Defendants are each a "debt collector" pursuant to 15
11 U.S.C. § 1692(a)(6).

12 17. Defendants John Does and Jane Does I-X, ABC Corporations I-V and XYZ
13 Partnerships I-V, and ABC LLCs or other individuals, directors and officers or business
14 entities who may be liable to Plaintiff but whose identities are not presently known will be
15 added, at which time Plaintiff will seek leave to amend the Complaint.
16

17 18. Defendants, either individually or collectively, have caused events to occur in
18 Arizona giving rise to this Complaint. The damages incurred by Plaintiff far exceed the
19 minimal jurisdictional requirements of this Court.
20

21 **JURISDICTION AND VENUE**

22 19. This Court has jurisdiction over the matters related to the emergency, injunctive,
23 provisional, and equitable relief sought herein, pursuant to the agreements of the parties
24 referenced below.

25 20. Venue is proper pursuant to Arizona Revised Statutes § 12-401, et seq.

26 21. The transaction was originated within Maricopa County, Arizona.

1 22. The parties herein are subject to certain contractual obligations that are the
2 subject of this litigation.

3 23. This action is brought, for among other purposes, to restrain and enjoin the
4 Defendants, their agents, employees, representatives, lawyers, directors and officers, from
5 taking any action to improperly transfer, dispose of, or use the property of Plaintiff to foreclose
6 and gain possession of Plaintiff's Property.
7

8 24. All following exhibits are true and correct, and attached hereto and incorporated
9 herein.

10 **PRIMARY CAUSE OF ACTION**

11 25. Defendant's "Kondaur" and "Folk and O'Connor's" illegal and damaging lack of
12 standing pursuant to A.R.S. 47 § 3302 and Rules of Civil Procedure 1 & 17(a) are the primary
13 cause of this complaint, as well to the emergency and permanent application, to thwart
14 otherwise irreparable harm and injury to Plaintiff's real property, from Defendant's utter lack
15 of said A.R.S. 47 § 3302 standing. Other Defendants herein have previously and repeatedly
16 aided & abetted the irreparable harm & injury by their actions and inactions throughout the
17 time period mentioned in this complaint. Other Defendants continue to do so without restraint.
18

19 26. Plaintiff herein moves for Summary judgment for Quiet Title for Defendant's
20 lack of standing on per Rule 17(a).
21

22 **GENERAL ALLEGATIONS**

23 **I. References to Parties**

24 27. Defendants are also hereinafter referenced in addition to their full names, within this
25 complaint as follows: The cluster of "Kondaur" corporate entities referred to in the caption as either,
26 Kondaur Capital Corporation, Kondaur Venture X, LLC, and/or Kondaur Capital Trust Series 2009-3,

1 (hereinafter also referenced as "Kondaur"); Deutsche Bank Trust Company Delaware (hereinafter also
2 "Deutsche"); Paula Chastain (hereinafter also "Chastain"); Folks and O'Connor, PLLC, (hereinafter
3 "Folks) and M & I Marshall and Ilsley Bank (hereinafter also "M & I" or "M & I Bank").

4 28. Plaintiffs apologize to the court for the lengthy detail in this complaint, but these
5 million-dollar Defendants have a reputation for moving to dismiss for lack of 'specificity'. Pro per
6 Plaintiffs are a bit overbroad with each Defendant's name to eliminate that nonsensical potential of
7 claim.
8

9 **II. The Property**

10 29. Plaintiff James McKinney has a primary home at 618 S. Wickiup, Apache
11 Junction Arizona 85219, Tax Parcel No. 103-04-057A4 - (the "Property").
12

13 **III. Originator and Previous Servicer - M & I Bank**

14 30. The total note amount was \$408,458 by an unknown Real Party in Interest. On
15 information and belief, Plaintiff's Note was likely turned over to an unknown undisclosed
16 M.B.S (Mortgage Backed Security) for shredding of the note per Internal Revenue R.E.M.I.C
17 Trust rules. M & I Bank was the commission-based originator, and then 'servicer' from
18 February 2007 to August 2009.

19 31. Between March to May 2009, during continued administrative discovery of
20 regulatory violations, misrepresentations, and material breaches, Plaintiff disputed and then
21 rescinded the Note to M & I. During this time-period, employees of M & I Bank had advised
22 retired Plaintiff to quit making payments "to qualify for a loan modification" they were
23 proffering. Least-sophisticated consumer-Plaintiff in good faith complied with the advice of
24 servicer M & I Bank, yet in response M & I denied any reasonable, H.O.E.P.A. compliant
25 modification and instituted a Notice of Trustee Sale instead.
26

1 32. After much research, Plaintiff later discovered that only approximately 4% of
2 loans are actually ever modified in the United States, so M & I's inducements to retired
3 Plaintiff were absurd and unsustainable.

4 33. M & I bank as lowly servicer, was wholly unable as a non-Real Party in Interest
5 to actually contract into loan negotiations and modifications with Plaintiff. On information and
6 belief, this non-ability to contract problem as a non-owner is nationwide, with most
7 'securitized' loans in the United States handled by debt collector servicers who are not Real
8 Parties in Interest.

9 34. M & I Bank's inducements and advice to Plaintiff to default were unnecessary,
10 misleading, fraudulent, and damaging to Plaintiff. M & I bank repeatedly violated R.E.S.P.A.,
11 H.O.E.P.A., F.D.C.P.A., and F.C.R.A. during their origination and during the servicing.

12 35. Over a nine-month period, Defendant Servicer/Debt Collector M & I Bank has
13 unlawfully refused to clearly answer six separate R.E.S.P.A Qualified Written Requests by the
14 Consumer to clarify the standing of the actual real parties to this transaction.

15 36. Over a six-month period, successor Servicer/Debt Collector Kondaur has
16 unlawfully and repeatedly refused to clearly answer a separate R.E.S.P.A Qualified Written
17 Requests by the Consumer to clarify the Holder In Due Course/Real Party in Interest Question.

18 37. Both M & I's and Kondaur's refusal to acknowledge and answer Plaintiff's
19 Qualified Written Requests were in purposeful violation of 12 U.S.C. Section 2605(e), to as to
20 keep Plaintiff in the dark in his quest to negotiate directly with the Real Party in Interest to the
21 Note.

22 38. During origination, between January to February 2007, M & I Bank violated the
23 Home Ownership and Equity Protection Act, 15 U.S.C. § 1639 (hereinafter H.O.E.P.A.) when
24
25
26

1 qualifying this 71-year-old Plaintiff for \$2,375.00 monthly interest, adjustable, when M & I
2 bank themselves qualified him to pay this amount upon a "\$1 a month" income, as proffered by
3 and written to underwriting by a M & I Bank employee.

4 39. M & I Bank clearly knew the requirements of H.O.E.P.A. yet refused to follow it
5 in this transaction, for their commission-based profit and gain.

6 40. M & I Bank lacks good faith in all of these blatant regulatory violations.

7 41. Since M & I Bank refuses to follow R.E.S.P.A and plainly answer Plaintiff's
8 well-written Qualified Written Requests (QWR), it appears to Plaintiff on information and
9 belief, that M & I Bank has indeed securitized for and/or sold this loan for consideration to
10 another unknown party. M & I Bank has repeatedly refused to answer this simple discovery
11 question over six months: Who is the Holder in Due Course/Real Party in Interest to this
12 transaction?
13

14 42. Only a Holder in Due Course who purchased the Note without default per ARS
15 47-3302; can be a Real Party in Interest within any real estate Chain of Title.

16 43. Only a Real Party in Interest can plead and defend in this Court per 16 A.R.S.
17 Rules of Civil Procedure, Rule 17(a).

18 44. This refusal of Defendants M & I, Folks & O'Connor, and Kondaur to answer
19 Plaintiff's multiple R.E.S.P.A. QWRs has led Plaintiff, upon information and belief, to make in
20 response to this default the foregoing, lack of Real Party in Interest allegations. Simple good
21 faith obedience to R.E.S.P.A by Defendants would have eliminated this unnecessary confusion
22 for Plaintiff and this Court. Such 6-months evasiveness by Defendants' has hindered Plaintiff
23 in creating brevity and clarity from proper discovery, and has damaged Plaintiff well beyond
24 the \$2,000 statutory R.E.S.P.A. fines of each and every such violation of non-disclosure. Even
25
26

1 if the original Real Party in Interest is found, their assignee is not and cannot be a Holder in
2 Due Course, since the assignee knowingly bought the transaction in default, dispute, and
3 dishonor.

4 45. Defendants' M & I, Kondaur, and Folks evasiveness has caused repeated
5 unnecessary intentional emotional distress upon this retiree Plaintiff as well, as the parties
6 repeatedly threaten non-judicial foreclosure as punishment for asking. Defendants are required
7 to answer and verify the R.E.S.P.A. questions first. Each Defendant should first verify and
8 correct the violations of law first, before initiating any non-judicial administrative foreclosure
9 proceeding. The F.D.C.P.A. requires each of them to do so first, yet all Defendants' refuse to
10 follow this law in violation of the stated intent of congress when implementing it.
11

12 46. Congressional intent in creating the F.D.C.P.A. is specified in law as follows:
13

14 *"There is abundant evidence of the use of abusive, deceptive, and unfair debt*
15 *collection practices by many debt collectors. Abusive debt collection practices*
16 *contribute to the number of personal bankruptcies, to marital instability, to the*
17 *loss of jobs, and to invasions of individual privacy.... "Existing laws and*
18 *procedures for redressing these injuries are inadequate to protect consumers."*
19 Title 15 § 1692 (a, b).

20 47. The above callous repeated F.D.C.P.A violations and other violations of the
21 Defendants have greatly deteriorated the financial stability of retired Plaintiff.

22 48. Each of these violations of R.E.S.P.A was also a separate state violation of the
23 Arizona Consumer Fraud Act, A.R.S. §§ 44-1522, *et seq.* ("A.C.F.A.").

24 49. Each of these violations of F.D.C.P.A. was also a separate state violation of the
25 Arizona Consumer Fraud Act, A.R.S. §§ 44-1522, *et seq.* ("A.C.F.A.").

26 50. By January 2009 in a rapidly deteriorating economy, Plaintiff had used up his
bank savings from the refinance. Plaintiff has been trying to sell the well-maintained property

1 for two years in a severely declining real estate market; to save his original \$170,000 free &
2 clear lot equity, and every Holder in Due Course involved.

3 51. In the spring of 2009, Plaintiff approached M & I to do a 'workout plan', who
4 refused to do anything reasonable in light of Plaintiff's current income. This especially
5 considering that M & I grossly violated H.O.E.P.A. to begin with - And would normally try to
6 mitigate that foundational violation.
7

8 52. This violation of H.O.E.P.A. was also a separate state violation of the Arizona
9 Consumer Fraud Act, A.R.S. §§ 44-1522, *et seq.* ("A.C.F.A.").

10 53. In May 2009, Plaintiff discovered that, M & I bank had failed to properly
11 disclose the material notices and terms of the loan in Material Breach.
12

13 **IV. Material Breach Rescission**

14 54. In May 2009, Plaintiff discovered that M & I Bank:

15 A. failed to properly disclose the material notices, and terms of the loan,

16 B. misrepresented the securitized terms and parties of the loan

17 C. violated regulatory laws such as H.O.E.P.A and other Material rescission
18 precedents.

19 D. repeatedly violated the F.D.C.P.A. in the servicing and collection of the debt.

20 E. failed to disclose the Holder in Due Course of the transaction

21 F. failed to disclose the Real Party in Interest to the transaction to Plaintiff
22

23 55. The above actions of servicer M & I Bank were misleading to Plaintiff.

24 56. The actions of M & I Bank above were Material Breaches to the contract.

25 57. All the above actions are separate state-related Material Breaches within
26 Arizona's Consumer Fraud Act (A.C.F.A.)

1 58. The A.C.F.A. is also referenced as the Unfair & Deceptive Acts & Practices
2 (U.D.A.P.) in Plaintiff's correspondence to Defendants.

3 59. Each separate A.C.F.A. action has damaged Plaintiff.

4 60. Severally, Plaintiff rescinded on June 4th, 2009 for these breaches as well by
5 certified mail notice to M & I Bank.

6
7 **V F.D.C.P.A. Non-Disclosure, Non-Compliance by Defendants.**

8 61. On June 4th, 2009, Plaintiff sent this rescission and F.D.C.P.A. disputes to
9 Defendant Folks and O'Connor. Folk's and O'Connor as M & I's Special Power of Attorney,
10 Accountant, agent, and legal counsel, refused to obey Defendant's Rescission, and instead
11 purposely and with intentional infliction of emotional distress upon Plaintiff; by creating an
12 unavoidable immediate 'crisis' in the mind of the Plaintiff; recorded their "Breach" notice and
13 "Notice of Trustee's Sale in the Public Records."
14

15 62. This refusal to verify and obey the F.D.C.P.A. and F.C.R.A. dispute was
16 specifically simultaneously made by Jennifer C. Menges, debt collector of Folks & O'Connor,
17 to the intentional emotional distress and financial loss of Plaintiff.

18 63. When one makes a phone call to Folks & O'Connor, the phone conversation is
19 always preceded with a F.D.C.P.A. recording notice clearly stating that they are a 'debt
20 collector.' The term 'debt collector' comes from the F.D.C.P.A. and debt collectors are strictly
21 regulated thereby. This recorded notice is one of the F.D.C.P.A. requirements.
22

23 64. The F.D.C.P.A. requires a Debt Collector like Folks & O'Connor; to first verify
24 and validate the debt, and to put on hold collection activities during that time period, yet Folks
25 & O'Connor and Jennifer Menges refused to obey the F.D.C.P.A. to the detriment of Plaintiff,
26

1 knowing the their actions would likely not be reviewed, in a convenient, non-judicial
2 proceeding.

3 65. Defendant M & I Bank is known to be heavily involved in undisclosed
4 securitization of borrower's signatures on mortgage loans. Numerous SEC 8-K and 10-K
5 filings of M & I document these securitized, multiple-entity relationships. Defendant M & I
6 Bank has repeated refused to disclose to Plaintiff which specific entities and filings are
7 involved.
8

9 66. As a violation of A.C.F.A., the F.D.C.P.A., and against the interests of Plaintiff,
10 to date, on information and belief, Defendant M & I failed to disclose the hidden securitization
11 of the borrower's signature, and/or the sale-for consideration of the loan to a third unknown
12 party. This portion of the note contract was not known nor disclosed to Plaintiff, and
13 misrepresented and concealed by this Defendant. The unknown Real Party in Interest failed to
14 disclose these particulars of the loan as well.
15

16 67. Defendant Folks and O'Connor as Power of Attorney of 'servicer' has to failed
17 to disclose same.

18 68. Defendant Kondaur as 'servicer' or otherwise, has to failed to disclose same.

19 69. M & I Bank none-the-less, instead of correcting the misrepresentation, legal, and
20 fatal regulatory breaches they knew about, after being noticed in writing on June 4th, 2009,
21 purposely recorded a non-judicial foreclosure on June 5th, 2009 with special power of attorney
22 for M & I Bank, Defendant Folks & O'Connor.
23

24 **VI. Successor 'Trustee' Folks & O'Connor lacks valid Chain of Title from a**
25 **Holder in Due Course.**
26

1 70. Successor Trustee, debt collectors Jennifer Menges and Folks & O'Connor also
2 well knew about the June 4th, 2009 Material Breach Rescission, both in writing and verbally,
3 before filing their Notice of Trustee Sale, but went ahead and recorded it anyway in the public
4 recorders office on June 5th, 2009 to preserve their fees, percentages, and their profitable
5 business relationship with M & I Bank.
6

7 71. By proceeding on a previously rescinded loan in F.D.C.P.A and F.C.R.A.
8 dispute, Folks & O'Connor breached their Trusteeship. (A courtesy-notice conversation with
9 Jennifer Menges was also recorded, pre-filing with them on June 5th, 2009, which Folks and
10 Menges egregiously ignored).
11

12 72. Defendant Folks & O'Connor conspired with M & I in Breach, to damage
13 Plaintiff needlessly anyway, by rush the clock on non-judicial foreclosure on a disputed and
14 partially void security interest.
15

16 73. Defendant Folks & O'Connor lacks Clean Hands.
17

18 74. Defendant Folks & O'Connor thereby is in Breach.
19

20 75. Defendant Folks & O'Connor as: Servicer, Servicer's agent, F.D.C.P.A. Debt
21 Collector, Accountant, Legal Counsel, and Power of Attorney was completely involved in
22 aiding and abetting Defendants Kondaur and M & I Bank, in all the allegations against those
23 Defendants.
24

25 76. Defendant Folks & O'Connor as: Servicer, Servicer's agent, F.D.C.P.A. Debt
26 Collector, Accountant, Legal Counsel, and Power of Attorney was completely involved in
covering up the regulatory and other allegations against Defendant Kondaur and M & I Bank,
knowing full well that their actions very likely would not be reviewed in a quick non-judicial
foreclosure process.

1 77. Plaintiff noticed again Defendant Folks & O'Connor about these matters on June
2 20th, 2009 by certified mail, and Folks & O'Connor did absolutely nothing to mitigate their
3 ongoing damages against Plaintiff.

4 78. Defendant Kondaur(s) have aided, abetted, and continued all of the above
5 damages to Plaintiff.

6
7 **VII Subsequent Defendant Kondaur(s) seeks out defaulted non-Holder in Due**
8 **Course loan, and finds it in Plaintiff's property, hoping no one including**
9 **Plaintiffs will notice.**

10 79. After these events, between June 2009 and August 2009, M & I Bank
11 nonetheless, instead of correcting the mounting misrepresentation, legal, and fatal regulatory
12 breaches they knew about, instead reportedly 'sold' M & I's Servicer's rights to a Delaware
13 corporation called Kondaur Capital Corporation, operating out of California.

14
15 80. Amazingly, Kondaur Capital Corporation boastfully advertises itself on its
16 internet home page "Welcome to Kondaur Capital Corporation" as 'buying' notes with "*Loans*
17 *with origination fraud*", and "*Loans with regulatory violations*" (**Exhibit C**) for, according to
18 their 4-08-09 Kondaur's newsletter, "*Pennies on the Dollar*".

19 81. Kondaur aids, abets, and furthers M & I's scheme of wiping away any chance to
20 rectify and prosecute regulatory violations, misrepresentations, and breaches; with the use of
21 Kondaur's employees affectionally called 'Combat Loss Mitigations'. These 'Combat
22 Mitigations' repeatedly threaten homeowners with Arizona Non-judicial foreclosure process
23 and short dates; to badger weary homeowners to just ignore the disputed breaches and claims,
24 and under duress take a bribe to abandon the homeowner's regulatory and F.D.C.P.A. disputes,
25 their home and the homeowner's original down payment/equity.
26

1 82. Kondaur conspired with M& I Bank, Folks and O'Connor, and all other
2 Defendants to profit greatly with their 'Pennies on the Dollar' enterprise with M & I Bank and
3 other Defendants.

4 83. Kondaur conspired with other Defendants to quickly liquidate the homeowner
5 out of his remaining property, leaving Defendant out on the street, without the security of a
6 lifetime's work of assets.

7
8 **VIII Kondaur's Foundational Standing & Regulatory Violations**

9 84. As noted earlier, M & I reportedly later 'sold' this *defaulted* dishonored note to
10 some foreign corporate entity with the name Kondaur in its title, as noted below.

11 85. Like previous servicer M & I Bank, Defendant servicer Kondaur has repeatedly
12 refused to follow R.E.S.P.A. federal disclosure law within 12 U.S.C. Section 2605(e), in
13 disclosing the relationship of and between the various Kondaur foreign entities, LLCs,
14 Corporations, and offshore Trusts registered in the state of Delaware to Plaintiff, even though
15 Kondaur themselves claim the legal responsibility to do so right in their own introductory letter
16 (Exhibit A, July 31st letter paragraph 10)

17
18 86. There are 44 foreign to Arizona, corporate entities incorporating the name
19 "Kondaur" related to these Defendants registered in the state of Delaware. (Exhibit B)

20 87. 43 of these 44 foreign entities are not registered to do business in Arizona, yet 3
21 of them claim a relationship with Plaintiff, and more importantly to his recorded property
22 rights. (Exhibit A).

23
24 88. Three of the 44 Kondaur entities: Kondaur Capital Corporation; Kondaur
25 Venture X, LLC; and Kondaur Capital Trust Series 2009-3 appear in two notice papers sent to
26 Plaintiff dated August 4th, 2009 and July 31st, 2009. (Exhibit A).

1 89. Only one of the three Kondaur entities, "Kondaur Capital Corporation" is
2 properly registered to do business in the state of Arizona.

3 90. Kondaur Capital Corporation; Kondaur Venture X, LLC; Kondaur Capital Trust
4 Series 2009-3 have purposely, maliciously, and recklessly kept Plaintiff in the dark for 160
5 long unnecessary days, as to which Kondaur corporate entity if any, actually claims and proves
6 ownership of the Note and Deed of Trust. Their own July 31st, 2009 specifically states they
7 had 60 business days to answer. (Exhibit A, July 31st letter, paragraph 10).
8

9 91. Later in December 2009, Kondaur Capital Corporation employee Peter Bai told
10 Plaintiff McKinney, that Kondaur Capital Corporation was indeed *not* a servicer of the loan,
11 but quote an "*asset manager*".
12

13 92. This inducement to Plaintiff was a wire fraud upon Plaintiff by Kondaur Capital
14 Corporation.
15

16 93. The July 31st, 2009 letter sent to Plaintiff earlier by Kondaur Capital
17 Corporation, clearly states that Kondaur Capital Corporation is a R.E.S.P.A. 'servicer' of the
18 loan, also known in law as a F.D.C.P.A. §1692 debt collector, clearly contradicting the
19 December wire-fraud statement (Exhibit A, July 31st letter).
20

21 94. Neither a debt collector nor a servicer is an owner of a note.

22 95. Therefore Kondaur Capital Corporation as non-owner servicer is a commission-
23 based agent-contractee, with an unclarified or unknown third party.

24 96. In Kondaur's August 4th 2009 letter, Defendant Kondaur Capital Corporation
25 claims to have received a 'sold' or 'transferred' previously overdue, defaulted, dishonored
26 mortgage note from M & I Bank with the defaulted face amount of \$408,500. (Exhibit A,
August 4th, Letter).

1 97. Defendants "Kondaur Capital Corporation", some unclear non-registered
2 Kondaur entity, and Power of Attorney "Folks" are attempting to illegally foreclose the
3 Plaintiff's property, regardless to their absolute lack of standing to do so, as described below.

4 **IX. Kondaur's R.E.S.P.A. QWR violations**

5 98. Kondaur assumed the Servicing and Debt Collection of this Note by letter notice
6 to the Plaintiff dated July 31st, 2009.

7 99. On August 18th, 2009, Plaintiff sent this new servicer, Kondaur a Qualified
8 Written Request (QWR) requesting information; primarily to document who is actually is the
9 Real Party in Interest, and if that Party is a Holder in Due Course.

10 100. Servicer Kondaur is required by law to answer this QWR *and* as debt collector,
11 not to report any negative credit information during the answer time, usually 60 business days
12 per R.E.S.P.A. and per Kondaur's own letter notice to Plaintiff.

13 101. Kondaur violates R.E.S.P.A. and thereby A.C.F.A. in negatively reporting and
14 pursuing a disputed non-judicial foreclosure, when they haven't even attempted to answer this
15 QWR yet, to the detriment of Plaintiff.

16 102. From January 2009 to August 2009, Defendants M & I, Kondaur, Folks and
17 O'Connor, sent the Plaintiff several letters. These letters falls under the Fair Debt Collection
18 Practices Act a Federal Law, which prohibits the use of "abusive, deceptive, and unfair debt
19 collection practices by many debt collectors". 15 U.S.C. §1982.

20 103. By their admission, Kondaur, Folk & O'Connor, et. al. each are a "debt
21 collector" pursuant to 15 U.S.C. § 1692(a)(6).

22 104. There are numerous violations of the FDCPA in the Defendants'
23 communications. First, the communication must state the name of the actual creditor. The
24
25
26

1 recent letter incorrectly states that the creditor is Kondaur Capital Corporation. Kondaur
2 Capital Corporation is nothing but a Servicer, according to Kondaur's own August 4th, 2009
3 letter. (**Exhibit A**). Chain of Title is unrecorded, deficient, and illegal.

4 105. The July 31st 2009 Kondaur letter states that, the firm will assume the debt to be
5 valid unless you, within thirty days after receipt of this notice, dispute the debt in writing. If
6 there is a dispute in writing, then the firm **promises to obtain verification of the debt**, the
7 Defendant's representative promises to provide the Plaintiff "**with the name and address of**
8 **the original creditor, if it different from the current creditor**".

9
10 106. Despite the Plaintiff's Qualified Written Requests on August 18th, 2009, there
11 has received no written answer from Kondaur, Power of Attorney Folks & O'Connor or any of
12 the Defendants.

13
14 107. The Plaintiff's August 17th, 2009 dispute under F.D.C.P.A. has also been
15 ignored.

16 COUNT I

17 (QUIET TITLE, A.R.S. § 12-1101, et seq.)

18 (Defendants Kondaur, Folks & O'Connor, M & I Bank, Deutsch Bank)

19 108. Plaintiff repeat, re-allege and incorporates by reference the foregoing paragraphs.

20 109. Plaintiff is credibly informed and believes that Defendants make some claim
21 adverse to Plaintiff.

22
23 110. The Defendants allege that they are the owner of the Promissory Note and Deed of
24 Trust on the Property, yet while lacking status as a Holder in Due Course.

25 111. No Real Party in Interest is before this court, except Plaintiff as required by Rule
26 17(a).

1 112. **There is no proof of any Chain of Title by a Holder in Due Course.**

2 113. **Regardless,** No Defendant whatsoever is a Holder in Due Course in the
3 transaction.

4 114. Current Defendant's Kondaur, Folks, and O'Connor's Chain of Title lacks a
5 Holder in Due Course.

6 115. Said title is unrecorded, deficient, and illegal.

7 116. WHEREFORE, Plaintiff requests that judgment be entered against Defendants as
8 follows:
9

10 A. Judgment establishing Plaintiff's estate as described above;

11 B. Judgment barring and forever estopping Defendants from having or claiming
12 any right or title to the premises adverse to Plaintiff;

13 C. Judgment for Plaintiff's attorneys' fees and costs;

14 D. Such other and further relief as this Court deems just and proper.
15

16
17 **COUNT II**

18 **LACK OF STANDING - A.R.S. 47 § 3302 HOLDER IN DUE COURSE**

19 117. Neither defendants Kondaur Capital Corporation, Kondaur Venture X, LLC,
20 and/or Kondaur Capital Trust Series 2009-3, nor agent Defendant Folks and O'Connor are a
21 Holder in Due Course to the Note and Deed of Trust, pursuant to A.R.S. 47 § 3302, since they
22 knowingly purchased the note in violation of it.
23

24 118. Defendant Kondaur shamelessly advertises to regulation-violating bank, that
25 Kondaur purposely and seeks out and 'buys' loans with 'hyper-default', 'regulatory violations'
26 and unbelievably, 'origination fraud'. (Exhibit C).

1 119. Kondaur's website homepage at www.kondaur.com/home.aspx is prima facie
2 evidence that Kondaur had full 'knowledge' that they were buying loans with **default, dishonor,**
3 and/or **defect** and or **fraud**, in contrast to the opposite basic foundational elements required by
4 A.R.S. 47 § 3302. (**Exhibit C**).

5 120. Defendant Kondaur attempted to cover up their purchases of loans with
6 regulatory violations and origination fraud, by politely re-labeling them 'scratch & dent'
7 mortgages, in their advertised inducements for non-Holder in Due Course loans. Kondaur
8 Capital Corporation's CEO Joe Daurio stated in April of 2009:

9 *"....a loan is scratch-and-dent for any of the following three reasons: loan*
10 *performance - the loan is either in default or was previously in default; a loan*
11 *where a regulation was violated in the origination process; or for underwriting*
12 *reasons that involved fraud."* (**Exhibit D** - "Scratch-and-dent Loan Market
13 *Offers Outlet*").

14 121. Kondaur's April 2009 'Scratch-and-dent' 'Kondaur News' is prima facie that
15 Kondaur had full 'knowledge' that they were buying loans with default, dishonor, and/or defect
16 and or fraud in violation of A.R.S. 47 § 3302, including Plaintiff's.

17 122. On information and belief, Kondaur has purchased 28,000 mortgage notes
18 throughout the country with regulatory violations and origination fraud, including Arizona,
19 including this Note, and involving the direct subject property of this application.

20 123. Defendant corporation(s) Kondaur Capital Corporation knew that buying loans
21 with regulatory violations and origination fraud negates the Note per A.R.S. 47 § 3302, for lack
22 of a valid Holder in Due Course.

23 124. Defendant Kondaur continued this risky illegal behavior in Arizona due to the
24 large extraordinary profits derived from it.
25
26

1 125. On information and belief, Kondaur average purchase price of a Note with
2 regulatory violations is 23 cents on the \$1.00 of the defaulted 'face value' of the note.

3 126. This gross profit from buying illegally originated loans at this ratio, is 4 to 1
4 within just a few months time, necessary to complete a 90-day non-reviewed, non-judicial
5 foreclosure.

6 127. Defendant Kondaur assumed the risk of this illegal behavior in their business
7 model, as the few losses such as Plaintiff's contested note, are made up through the profits of
8 the estimated (95%) remainder of unchallenged loans that are foreclosed on, from least-
9 sophisticated, unrepresented, financially-strapped consumers.

10 128. Kondaur hoped that this Plaintiff consumer would collapse from exhaustion into
11 this undisputed category; and in August 2009 offered Plaintiff a \$5,000 cash bribe to drop
12 Plaintiff's claims of regulatory violations and origination fraud, telling Plaintiff to abandon his
13 claims and "*get on with your life*".

14 129. Kondaur's enterprise scheme is to abuse the Arizona non-judicial non-reviewed
15 foreclosure process to further 'clearing title' for previous violators' mistakes. This works to
16 unlawfully yet efficiently and cheaply 'quiet title' in 95+% of the regulatory-deficient, non-
17 Holder in Due Course notes that Kondaur 'assumes'.

18 130. A.R.S. 47 § 3302 clearly defines the necessary Holder in Due Course as follows:
19

20 A. "holder in due course" means the holder of an instrument **if**:....2. The
21 holder took the instrument: (a) For value; (b) **In good faith**; (c) **Without**
22 **notice** that the instrument is **overdue** or has been **dishonored** or that there is an
23 **uncured default** with respect to payment of another instrument issued as part of
24 the same series;"

25 131. Blacks Law Dictionary also defines a Holder in Due Course as follows:
26

1 A holder in due course is a person who takes a negotiable instrument, such as a
2 promissory note, for value without knowledge of any apparent defect in the
3 instrument nor any notice of dishonor. (Black's Law Dictionary 2nd Pocket ed.
4 2001 pg. 322).

5 132. As Kondaur knowingly advertised for, sought out, and 'bought' Plaintiff's note
6 with notice of it being "*overdue*" as noted above in A.R.S. 47 § 3302 (A) 2, Kondaur utterly
7 lacks standing as a Holder in Due Course. (Exhibits C & D).

8 133. Also as Kondaur knowingly advertised for, sought out, and 'bought' the note
9 with notice of it being previously *Dishonored* by Obligor/Plaintiff as noted in A.R.S. 47 §
10 3302, Kondaur lacks standing as a Holder in Due Course.

11 134. Also as Kondaur knowingly advertised for, sought out, and 'bought' the note
12 with notice of known *Defect* from M & I Bank as noted in A.R.S. 47 § 3302, Kondaur lacks
13 standing as a Holder in Due Course.

14 135. Also as Kondaur knowingly advertised for, sought out, and 'bought' the note
15 without the "*In Good Faith*" required by A.R.S. 47 § 3302, Kondaur lacks standing as a
16 Holder in Due Course.

17 136. A non-Holder in Due Course is NOT a Real Party in Interest in the overall
18 transaction.

19 137. Only a Holder in Due Course can be a Real Party of Interest in any real estate
20 Chain of Title as well.

21 138. Only a Real Party of Interest can plead and defend in this Court per 16 A.R.S.
22 Rules of Civil Procedure, Rule 17(a).

23 139. Kondaur is not a Holder in Due Course; and thereby is not a Real Party in
24 Interest.
25
26

1 140. Kondaur as a non-Holder in Due Course therefore is unable to create an
2 unbroken chain of title necessary to foreclose upon the non-Holder in Due Course note.

3 141. Kondaur as a non-Real Party in Interest lacks standing in this Court and lacks
4 standing against this Plaintiff per Rule 17(a).

5 142. Kondaur utterly lacks the good faith demanded by A.R.S. 47 § 3302

6 143. Kondaur lacks any clean hands implied within A.R.S. 47 § 3302.

7 144. This scheme is damaging hundred of Arizonians, by hindering their otherwise
8 pursuit and corrections of Regulatory and Misrepresentation violations in court.

9 145. This scheme is damaging Plaintiff greatly. Plaintiff is a 73-year-old retiree
10 trying to preserve the fruits of a lifetime of labor, his home equity from a non-valid non-party.

11 146. Up to Thursday, Kondaur Capital Corporation has been baiting Plaintiff with
12 settlement offers, that include unreasonable conditions, indemnifications, and change of
13 jurisdiction from Arizona to California. These inequitable 'settlement contracts' have been a
14 sham to 'run the clock' out on Plaintiff up to the non-judicial foreclosure date.

15 147. Kondaur Capital Corporation, literally without being a Holder in Due Course and
16 without Chain of Title, is trying to take away Plaintiff's home anyway, *tomorrow morning*,
17 January 5th, 2010, upon the courthouse's steps.

18 148. Defendant's have absolutely NO Arizona recorded chain of title to the Deed of
19 Trust, as bragged to in their 'hyper-default' website home page (**Exhibit C**).

20 149. Plaintiff has publicly rescinded Folks void Trusteeship and Power of Attorney of
21 and over the Deed of Trust, and noticed them of same for this crucial lack of a Holder in Due
22 Course, and appointed another Trustee.

1 150. Arizona law requires recorded, complete Chain of Title. Kondaur's, and Folks
2 and O'Connor's gross neglect of this public assignment law to date, creates repeated theft and
3 conversion in this county in the millions of dollars.

4 151. Finally, public policy greatly favors granting quiet title of the complaint.
5 Defendants are attempting to conduct a Trustee Sale that lacks a known A.R.S. 47 § 3302
6 Holder in Due Course, a fraud on Plaintiff and the public.

7
8 152. Although this Plaintiff homeowner has \$170,000 of his retirement earnings tied
9 up in the property, Kondaur repeatedly offered Plaintiff a \$5,000 bribe for future 'rent', thereby
10 concealing these fraud and violations of A.C.F.A., H.O.E.P.A., and ARS 47-3302, et. al.,
11 insuring they will never be adjudicated in court.

12 153. Kondaur has not sent an Assignment of Beneficial Interest to Defendant, yet
13 wishes to take his house.

14
15 154. On information and belief, and according to public filings, Kondaur has a direct
16 financial relationship with Deutsch Bank, who is likely involved in this transaction.

17 155. Kondaur has not answered Plaintiff's QWR questions about any of these entities
18 either.

19 156. Nonetheless, neither Kondaur nor any of its labyrinth entities can *never* be a
20 Holder in Due Course, even if they paid 'pennies on the dollar' or considerable more
21 consideration for the Note, as they knowingly and purposely violated Arizona's Uniform
22 Commercial Code, A.R.S. 47 § 3302, in any purchase from M & I.

23
24 WHEREFORE, Plaintiff requests that judgment be entered against Defendants as follows:

25 A. Summary Judgment that Defendants have no standing per Rule 17(a)
26 against Plaintiffs' quiet title action.

- 1 B Judgment ordering that the Trustee Sale be cancelled immediately;
2 C. Quiet Title Judgment barring and forever estopping Defendants from
3 having or claiming any right or title to the premises adverse to Plaintiff;
4 D. Judgment barring and forever estopping Defendants from having or
5 claiming any right or title to the Property adverse to Plaintiff;
6 E. Judgment for Plaintiff's attorneys' fees and costs;
7 F. Such other and further relief as this Court deems just and proper.
8

9
10 **COUNT III**

11 **BREACH OF CONTRACT**

12 **(All Defendants)**

13 157. Plaintiff realleges and incorporates the foregoing allegations in the Complaint as
14 if fully set forth herein.
15

16 158. Plaintiff and Defendants entered into a variety of agreements, as set forth more
17 fully above.

18 159. Defendants breached all of the agreements.

19 160. Defendants Folks & O'Connor knowingly aided & abetted these breaches of
20 contract.

21 161. Defendant Kondaur knowingly aided & abetted these breaches of contract.

22 162. Defendant Paula Chastain knowingly aided & abetted these breaches of contract.

23 163. Other Defendant's aided & abetted these breaches as well.
24

25 WHEREFORE, based upon the foregoing, Plaintiff's pray for judgment against Defendants, as
26 follows:

1 A. For Quiet Title against all Defendants lacking Holder in Due Course.

2 *OR in the Alternative, the following:*

3 B. For such actual and consequential damages as may be proved at the time of trial;

4 C. For Plaintiff's taxable costs and reasonable attorneys' fees pursuant to A.R.S. §
5 12-341.01 and the actual documents.

6 D. And for such other and further relief as this Court deems just and equitable.

7
8 **COUNT IV**

9 **VIOLATION OF THE ARIZONA CONSUMER FRAUD ACT**

10 **(All Defendants)**

11
12 164. Plaintiff realleges and incorporates the foregoing allegations in the Complaint as
13 if fully set forth herein.

14 165. The Defendants' Kondaur, M & I Bank, Folk's & O'Connor, et. al. above-
15 described actions constitute violations of the Arizona Consumer Fraud Act, A.R.S. §§ 44-1521,
16 *et seq.* ("ACFA").

17 166. As a result of the Defendants' violations of the ACFA, the Plaintiff suffered
18 damages in an amount to be determined by this Court.

19 167. Defendant M & I made all the misrepresentations described above with the intent
20 and purpose of inducing Plaintiff into signing an agreement for refinancing and did not provide
21 the appropriate closing documents required by Arizona and Federal law.

22 168. The Plaintiff was unaware that the representations described above were false.

23 169. The Plaintiff acted in reasonable reliance on the representations to his detriment.
24
25
26

1 170. The above acts by Defendants constitute consumer fraud in violation of Arizona
2 Consumer Fraud Act, A.R.S. §§44-1521 *et seq.*

3 171. All Defendants herein aided and abetted each of these ACFA violations.

4 172. In violating the ACFA, the Defendants acted with an evil mind, intending to
5 injure the Plaintiff or consciously disregarding the substantial risk that their conduct would
6 cause significant harm to the Plaintiff.
7

8 173. The Plaintiff is therefore entitled to recover actual and punitive damages

9 174. WHEREFORE, the Plaintiff prays that this Court award them:

10 A. For Quiet Title against all Defendants.

11 *OR in the Alternative, the following:*

12 B. Actual, consequential, incidental, and punitive damages;

13 C. Attorneys' fees pursuant to A.R.S. § 12-341.01:

14 D. Costs;

15 E. All applicable interest; and,

16 F. Such other relief as this Court deems just and equitable.
17

18 **COUNT V**

19 **(TRUTH IN LENDING ACT, 15 U.S.C. § 1601 *et seq.*)**

20 **(All Defendants)**

21
22 175. Plaintiff repeats, re-alleges, and incorporates by reference the foregoing
23 paragraphs.

24 176. Defendants failed and refused to give a copy of their alleged **assignment** of the
25 Deed of Trust to Plaintiff. Defendants have transferred title of their purported real property to
26 an unknown to Plaintiff party.

1 177. Defendants materially violated TILA 15 U.S.C. § 1601 et. seq. and Regulation Z
2 § 226.18 which require a creditor to disclose among other things, Annual Percentage Rate
3 calculated using the methods prescribed in the Regulation Z, the amount financed, and the total
4 finance charge.

5 178. All Defendants herein aided and abetted each of these TILA violations.

6 179. Defendants may have violated other statutes and regulations. This allegation will
7 be supplemented after discovery.

8 180. Had Defendants made the full disclosure as required by TILA, Plaintiff would
9 not have entered into the unconscionable financing arrangement.

10 181. Plaintiff has been harmed and suffered actual damages proximately caused by
11 the conduct of Defendants.

12 WHEREFORE, Plaintiff requests that judgment be entered against Defendants as
13 follows:

14 A. For Quiet Title against all Defendants.

15 *OR in the Alternative, the following:*

16 B. Judgment that these violations of the Truth-In-Lending Law be further evidence
17 of lack of good faith of all Defendants.

18 C. Judgment that these violations of the Truth-In-Lending Law be construed as
19 evidence of companion violations of the A.C.F.A and the F.D.C.P.A.

20 D. Plaintiff be awarded actual damages suffered as a result of Defendants' conduct;
21 and

22 E. Judgment for Plaintiff's attorneys' fees and costs.

23 COUNT VI

1 **(HOME OWNERSHIP AND EQUITY PROTECTION ACT, 15 U.S.C. § 1639)**

2 **(All Defendants)**

3 182. Plaintiff repeat, re-allege and incorporate by reference the foregoing paragraphs.

4 183. The transaction described above is actually a HOEPA mortgage as defined in 15
5 U.S.C. § 1602(aa).

6 184. Defendants violated the disclosure requirements for a HEOPA mortgage as set
7 forth in 15 U.S.C. § 1639(a).

8 185. Defendants violated 15 U.S.C. § 1639(h) which prohibits a creditor from
9 engaging in a pattern or practice of extending such credit to a consumer based on the
10 consumer's collateral if, considering the consumer's current and expected income, current
11 obligations, and employment status, the consumer will be unable to make the scheduled
12 payments to repay the obligation.

13 186. Plaintiff has been harmed and suffered actual damages proximately caused by
14 the conduct of Defendants.

15 187. All Defendants knew or should have known about Defendant M & I's failures to
16 comply with the TILA and HOEPA.

17 188. All Defendants herein aided and abetted each of these H.O.E.P.A. violations.

18 189. Defendants are liable for Plaintiff's claims arising out of Defendants' failure to
19 comply with the TILA and HOEPA.

20 190. WHEREFORE, Plaintiff request that judgment be entered against Defendants as
21 follows:

- 22 A. Quiet Title against all Defendants if Plaintiff is granted Summery
23 Judgment for Defendant's Lack of Holder in Due Course, per Rule 17(a).

1 *OR in the Alternative, the following:*

- 2 B. Actual and Punitive Damages;
- 3 C. Judgment that Plaintiff be awarded actual damages suffered as a result of
- 4 Defendants' conduct;
- 5 D. Judgment for Plaintiff's attorneys' fees and costs;
- 6 E. Such other and further relief as this Court deems just and proper.
- 7

8 **COUNT VII**

9 **VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT §1692**

10 **(All Defendants)**

- 11 191. Plaintiff repeats, reallege, and incorporates by reference the foregoing paragraphs.
- 12 192. All Defendants, including Kondaur, Folks and O'Connor are debt collectors under
- 13 15 U.S.C. § 1692(a)(6).
- 14
- 15 193. The Plaintiff is consumer under the FDCPA.
- 16 194. Defendant Kondaur, sent a letter to Plaintiff on June 31st, 2009, identifying
- 17 themselves as Debt collectors and gave some of the appropriate notices under the
- 18 FDCPA, including allowing the Plaintiff the ability to dispute the debt and request
- 19 verification of the debt.
- 20 195. On or about August 17th, 2009, the Plaintiff wrote that dispute letter and requested
- 21 verification of the debt.
- 22
- 23 196. According to the Fair Debt Collection Practices Act, 15 U.S.C. § 809(b), "if the
- 24 consumer notifies the Debt Collector in writing within the thirty-day period [of
- 25 receiving the initial communication], that the debt, or any portion thereof is
- 26 disputed, or that the consumer request the name and address of the original

1 creditor, the DEBT COLLECTOR SHALL CEASE COLLECTION OF THE
2 DEBT OR ANY DISPUTED PORTION THEREOF, UNTIL THE DEBT
3 COLLECTOR OBTAINS VERIFICATION OF THE DEBT....”

4 197. Despite the written request, the proper action was never taken by Kondaur, Folks
5 & O'Connor, nor any other Defendants.

6 198. Kondaur has failed and refused to stop collection of the debt until they verify the
7 debt, and its chain of title.

8 199. Folks and O'Connor has failed and refused to stop collection of the debt.

9 200. M & I Bank has failed and refused to stop collection of the debt.

10 201. All other Defendants corporate and individual have failed and refused to stop
11 collection of the debt till was properly verified.

12 202. WHEREFORE, Plaintiff request that judgment be entered against Defendants as
13 follows:

14 A. Quiet Title against all Defendants if Plaintiff is granted Summery
15 Judgment for Defendants' Lack of Holder in Due Course, per Rule 17(a).

16 OR

17 *in the Alternative if proceeding to trial, Quiet Title, AND the following:*

18 B. Judgment establishing violation of the Fair Debt Collection Practices Act;

19 C. Judgment for Plaintiff's attorneys' fees and costs;

20 D. Such other and further relief as this Court deems just and proper.

21
22
23
24
25 **COUNT VIII**
26

VIOLATION OF ARIZONA ASSIGNMENT AND SATISFACTION OF
MORTGAGE LAW AND INVALID DEED OF TRUST

(All Defendants)

203. Plaintiff repeats, re-alleges, and incorporates by reference the foregoing paragraphs.

204. There is no proof of any assignment, trust, or successor interest by a Holder in Due Course.

205. M & I's Assignment of Trustee and Notice of Trustee Sale was deviously recorded after the TILA § 1635 Rescission causing the source document, the Deed of Trust to void for assignment or Trustee's sale.

206. The loan was in default at the time of the alleged transfer.

207. The loan was rescinded at the time of the alleged transfer and recorded notice.

208. The Deed of Trust is being held after the alleged "sale" to the assignee to the trust.

209. Kondaur Capital Corporation cannot take an equitable assignment of a Deed of Trust because it is not a Holder in Due Course.

210. No other Defendant listed here can take an equitable assignment of a Deed of Trust when it is not a Holder in Due Course.

211. A.R.S. § 33-420(A), states that [a] person purporting to claim an interest in, or a lien or encumbrance against, real property, who causes a document asserting such claim to be recorded in the office of the county recorder, knowing or having reason to know that the document is forged, groundless, contains a material misstatement or false claim or is otherwise invalid is liable to the owner or beneficial title holder of the real property for the sum of not less

1 than five thousand dollars, or for treble the actual damages caused by the recording, whichever is
2 greater, and reasonable attorney fees and costs of the action.

3 212. Arizona Law requires that no estate shall be conveyed unless the conveyance is
4 by an instrument in writing, subscribed and delivered by the party disposing of the estate.

5 213. Every deed or conveyance of real property must be signed by the grantor and
6 must be duly acknowledged before some officer authorized to take acknowledgments.
7

8 214. A party causing an invalid document to be recorded must know or have reason to
9 know under A.R.S. § 33-420 that the document is invalid.

10 215. It would be impossible, under the circumstances of this and thousand of other
11 cases across the country, in which the Defendants have been judicially estopped from moving
12 forward with Foreclosure or Trustee sales, based upon their inability to show that they are the
13 true beneficiary/owner under the Deed of Trust, to state that the Defendants did not know or
14 have reason to know that the post-rescission Substitution of Trustee and Notice of Trustee Sale
15 were invalid on their face.
16

17 216. Chain of Title is not complete, nor can it ever be due to a lack of a Holder In Due
18 Course. All actions in default and dishonor were knowingly and intentionally entered into by
19 Defendant buyers.
20

21 WHEREFORE, Plaintiff requests that judgment be entered against Defendants as follows:

- 22 A. Judgment ordering that the Trustee Sale be cancelled immediately;
- 23 B. Judgment barring and forever estopping Defendants from having or
24 claiming any right or title to the Property adverse to Plaintiff;
- 25 C. Judgment for Plaintiff's attorneys' fees and costs;
- 26 D. Such other and further relief as this Court deems just and proper.

1
2 **COUNT IX**

3 **(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)**

4 **(All Defendants)**

- 5 217. Plaintiff repeats, re-alleges, and incorporates by reference the foregoing
6 paragraphs.
7
8 218. Defendants' actions described above were extreme and outrageous.
9
10 219. Defendants either intended to cause Plaintiff emotional distress or recklessly
11 disregarded the near certainty that such distress would result from their conduct.
12 220. Plaintiff sustained severe emotional distress as a result of defendants' conduct.
13 221. Defendants conspired to act in a manner, which caused Plaintiff's emotional
14 distress.
15 222. Defendants continually conspired to coerce him into relinquish his claims and his
16 equity.

17 WHEREFORE, Plaintiff request that judgment be entered against Defendants,
18 jointly and severally, as follows:

- 19 A. Quiet Title against all Defendants if Plaintiff is granted Summary Judgment
20 for Defendant's Lack of Holder in Due Course, per Rule 17(a).

21 *OR*

22
23 *in the Alternative if proceeding to trial, Quiet Title, AND the following:*

- 24 B. Judgment that Plaintiff be awarded general damages suffered as a result of
25 Defendants' conduct;
26

- 1 C. Punitive damages as appropriate to punish and deter Defendants from
2 engaging in similar conduct in the future;
3 D. Judgment for Plaintiff's attorneys' fees and costs;
4 E. Interest on the judgment rendered herein at the maximum lawful rate from the
5 date of its rendition until paid in full; and
6 F. Such other and further relief as this Court deems just and proper.
7
8

9 **COUNT X**

10 **FRAUD – MISREPRESENTATION AND CONSPIRACY**

11 **(ALL DEFENDANTS)**
12

13 223. Plaintiff realleges and incorporates by reference all prior paragraphs as if fully
14 set forth herein.

15 224. Defendants made certain representations and omissions to Plaintiff, including,
16 but not limited to those set forth more fully above.

17 225. The representations and omissions above, among others, were false.

18 226. The representations and omissions above, among others, were material, among
19 other things, to Plaintiff.
20

21 227. Defendants made these and other representations and omissions with knowledge
22 of their falsity.

23 228. Defendants made these representations and omissions to induce Plaintiff to enter
24 into business with Plaintiff.
25
26

229. Defendants worked together to overwhelm Plaintiff with unconscionable actions, threats, ignoring of known laws, false information, and false letters to weary Plaintiff's resolve to rectify these misrepresentations, frauds, and regulatory violations.

230. Plaintiff was not aware that Defendants' representations and omissions were false.

231. Plaintiff relied on the truth of Defendants' representations and omissions.

232. Plaintiff had no reason to question the truth of Defendants' representations and omissions.

233. Plaintiff has been injured by Defendants' misrepresentations in an amount to be proven at trial.

A. Quiet Title against all Defendants if Plaintiff is granted Summary Judgment for Defendants' Lack of Holder in Due Course, per Rule 17(a).

OR

in the Alternative if proceeding to trial, Quiet Title, AND the following:

B. For such actual, consequential, and punitive damages as may be proved at the time of trial;

C. For Plaintiff's taxable costs and reasonable attorneys' fees pursuant to A.R.S. § 12-341.01;

D. For costs of collection after judgment; and

E. Such other and further relief as the Court deems just and necessary.

COUNT XII

VIOLATION OF THE UNIFORM COMMERCIAL CODE

1 AS DEFINED IN A.R.S. §47-3100, §47-3302, et. al. and ARIZONA'S RECORDING

2 STATUTE

3 (All Defendants)

4
5 234. Plaintiff realleges and incorporates by reference all prior paragraphs as if fully
6 set forth herein.

7 235. The promissory note referred to in the Deed of Trust, in the Substitution of
8 Trustee and the Notice of Trustee's Sale, is a negotiable instrument, governed by A.R.S. §47-
9 3104(a), (b) and (e).

10
11 236. Plaintiff allege that Kondaur Capital Corporation and other defendants do not
12 meet the definition of a Holder in Due Course under A.R.S. § 47-3302.

13 237. Defendants lacking Holder in Due Course status are not entitled to enforce the
14 Deed of Trust, and, therefore, cannot legally go forward with the Trustee Sale in any form.

15 238. Arizona's recording statute requires that all conveyances of real estate be
16 acknowledged and recorded by real parties. A.R.S. § 33-412.

17
18 239. The Chain of Title is irrevocably breached by the lack of a good-faith, Holder in
19 Due Course in this transaction.

20 WHEREFORE, based upon the foregoing, Plaintiff asks for the following relief:

21 A. Cancellation of the Trustee Sale;

22 Quiet Title against all Defendants if Plaintiff is granted Summary Judgment for
23 Defendants' Lack of Holder in Due Course, per Rule 17(a).

24 OR

25 *in the Alternative if proceeding to trial, Quiet Title, AND the following:*
26

- 1 B. For such actual, consequential, and punitive damages as may be proved at the
2 time of trial;
3 C. For Plaintiff's taxable costs and reasonable attorneys' fees pursuant to A.R.S.
4 § 12-341.01;
5 D. For costs of collection after judgment.

6 **SUMMARY OF PLAINTIFF'S CAUSES OF ACTION**

7 240. Plaintiff's main causes are as follows.

- 8 A. Defendants violated several regulatory laws with impunity over a course
9 of years to date
10
11 B. Defendants attempted to cover up these violations with more violations
12 of R.E.S.P.A. and F.D.C.P.A. law and Arizona's non-judicial
13 Foreclosure process.
14
15 C. A newer Defendant, Kondaur knew of these regulatory violations,
16 disputes, defects, misrepresentations, and frauds upon the Plaintiff. Yet,
17 to aid & abet original Defendant legal dilemma and to profit well from
18 them, went ahead and purchased the Note anyway, so as to profit
19 directly from the reduced principle.
20
21 D. Defendants admittedly in their June 4th, 2009 letter, have knowledge of
22 actual buyers, Defendants Kondaur Venture X, LLC and Kondaur
23 Capital Trust Series 2009-3 who are not recorded in the Chain of Title
24 on the Deed of Trust.
25
26

1 E. Because of break in the Chain of Title, any attempted foreclosure by
2 later Defendants on a faulty assignment is fraud, illegal, conspiratorial,
3 completely destroying Plaintiff's property, and peace.

4 F. These later Defendants cannot buy faulty notes, then claim to be Holders
5 in Due Course, per Arizona's U.C.C statutes forbidding it.

6
7 G. Since none of the Defendants is a Holder in Due Course, none of them
8 are a Real Party in Interest in this transaction, and title need to be
9 permanently quieted against them for lack of Standing.

10 DATED this 4th day of September 2010.

11 By: 

James McKinney
Plaintiff Pro Per

12
13
14
15 By: 

James McKinney (II)
Plaintiff Pro Per

16
17
18 **VERIFICATION**

19 I, James McKinney, under penalty of perjury, state, that I am a party to the above-entitled
20 litigation, that I have read the attached Verified Complaint and know the contents therein, and
21 the matters and things stated therein, are true and correct to the best of my knowledge,
information and belief.

22 DATED this ____ day of September 2010.

23
24
25 
26 James McKinney

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VERIFICATION

I, James McKinney, under penalty of perjury, state, that I am a party to the above-entitled litigation, that I have read the attached Verified Complaint and know the contents therein, and the matters and things stated therein, are true and correct to the best of my knowledge, information and belief.

DATED this 4th day of September 2010.


James McKinney

CERTIFICATE OF SERVICE

A Copy of the foregoing complaint was mailed this ____ day of January 2010 to:

Kondaur Capital Corporation
Fax 877-566-3287
Phone 888-566-3287
1100 Town & Country #1600
Orange, California 92868

Larry O. Folks
Kathleen A. Weber
FOLKS & O'CONNOR
Fax 602-256-9101
Phone 602-262-2265
1850 N. Central Avenue #1140
Phoenix, Arizona 85004

James McKinney

VERIFIED COMPLAINT

EXHIBIT "A"

NOTICE OF ASSIGNMENT, SALE OR TRANSFER OF SERVICING RIGHTS

This notice is to inform you that effective August 16, 2009; the servicing of your mortgage loan is being assigned, sold, or transferred from M&I Marshall & Ilsley Bank, M&I Bank FSB, or Southwest Bank (M&I Bank) to Kondaur Capital Corporation. Servicing is defined as the right to collect payments from you on your mortgage loan.

The assignment, sale or transfer of the servicing of the mortgage loan does not affect any term or condition of the mortgage instruments, other than the terms directly related to the servicing of your loan.

Except in limited circumstances, the law requires that your present Servicer send you this notice at least 15 days before the effective date of transfer or at closing. Your new Servicer must also send you this notice no later than 15 days after this effective date or at closing.

Your present Servicer is M&I Bank. If you have any questions relating to the transfer of servicing from your present Servicer, call M&I Bank toll free at 1-888-464-5463, available 24 Hours.

Your new Servicer will be Kondaur Capital Corporation. The business address for your new Servicer is 1100 Town & Country Suite 1600, Orange, CA 92868. If you have any questions relating to the transfer of servicing to your new Servicer, please call toll free 1-877-737-8866, Monday through Friday from 8:30 a.m. – 5:30 p.m. PST.

The date that your present Servicer will stop accepting payments from you is August 16, 2009. Effective August 17, 2009, your new Servicer will start accepting payments from you. Begin making your checks payable to Kondaur Capital Corporation and mail your payment to PO Box 1449, Orange, CA 92856-1449.

You should also be aware of the following information, which is set out in more detail in Section 6 of the Real Estate Settlement Procedures Act (RESPA) (12 USC 2605):

During the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old Servicer before its due date may not be treated by the new Servicer as late, and a late fee may not be imposed on you.

Section 6 of RESPA (12 USC 2605) gives you certain consumer rights, if you send a "qualified written request" to your loan Servicer concerning the servicing of your loan, your Servicer must provide you with a written acknowledgment within 20 business days of receipt of your request. A "qualified written request" is a written correspondence, other than notice on a payment coupon or other payment medium supplied by the Servicer, which includes your name and account number, and your reasons for the request. Send written requests to 1100 Town & Country Rd, Suite 1600, Orange, CA 92868.

Not later than 60 business days after receiving your request, your Servicer must make any appropriate corrections to your account, and must provide you with a written clarification regarding any dispute. During the 60-business-day period, your Servicer may not provide information to a consumer reporting agency concerning any overdue payment related to such period or qualified written request, however, this does not prevent the Servicer from initiating foreclosure if proper grounds exist under the mortgage documents.

A business day is a day on which the offices of the business entity are open to the public for carrying on substantially all of its business functions.

Section 6 of RESPA also provides for damages and costs for individuals or classes of individuals in circumstances where Servicers are shown to have violated the requirements of that Section. You should seek legal advice if you believe your rights have been violated.

M&I Bank	July 31, 2009
Present Servicer	Date
Kondaur Capital Corporation	July 31, 2009
Future Servicer	Date

August 4, 2009

JAMES MCKINNEY
618 S Wickiup Rd
Apache Junction, AZ 85219

NOTIFICATION OF ASSIGNMENT, SALE OR TRANSFER OF YOUR MORTGAGE LOAN

RE: Loan Number -- 109147
Property Address: 618 S Wickiup Rd
Apache Junction, AZ 85219

The purpose of this notice is to inform you that, effective August 17 2009, your mortgage loan was assigned, sold or transferred to Kondaur Venture X, LLC and contemporaneously assigned, sold or transferred to Kondaur Capital Trust Series 2009-3. The assignment, sale, or transfer of your loan to Kondaur Venture X, Inc., and contemporaneous assignment, sale or transfer to Kondaur Capital Trust Series 2009-3, does not affect any term or condition of the Mortgage, Deed of Trust or Note and this notice requires no action on your part. If you need to contact these entities, they can be reached at:

Kondaur Venture X, LLC or Kondaur Capital Trust Series 2009-3
c/o Kondaur Capital Corporation
1100 Town & Country Road, Suite 1600
Orange, CA 92868
Attention: Jon Daurio, CEO
1-888-566-3287, ext. 2052

The above-described transfers of ownership were not recorded. However, there has been an assignment recorded, or we intend to record an assignment, into the name of the servicer of your loan, Kondaur Capital Corporation. Said recordation was, or is intended to be, in Pinal County, AZ.

If you have any questions relating to the transfers of ownership of your mortgage loan, please contact Kondaur Capital Corporation, the servicer of your mortgage loan and the designated agent for Kondaur Capital Trust Series 2009-3, at the following telephone number, and/or email address:

KONDAUR CAPITAL CORPORATION
Attention: Mike Perry
Toll-free: (877) 737-8866, ext. 2068
mperry@kondaur.com

It is important that you send your monthly payments directly to Kondaur Capital Corporation, the servicer of your mortgage, at the address on your mortgage statement.

Checks should be made payable to Kondaur Capital Corporation. All correspondence and inquiries concerning your mortgage loan should be addressed to Kondaur Capital Corporation.

VERIFIED COMPLAINT

EXHIBIT "B"

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* Required Field

* Entity Name: or File Number:

This field is not case sensitive.

FILE NUMBER	ENTITY NAME
4376689	KONDAUR CAPITAL CORPORATION
4205358	KONDAUR CAPITAL, LLC
4626979	KONDAUR CAPITAL TRUST SERIES 2008-1
4636981	KONDAUR CAPITAL TRUST SERIES 2008-2
4638978	KONDAUR CAPITAL TRUST SERIES 2008-3
4687885	KONDAUR CAPITAL TRUST SERIES 2009-1
4715615	KONDAUR CAPITAL TRUST SERIES 2009-3
4547551	KONDAUR VENTURES II B1, L.L.C.
4566453	KONDAUR VENTURES III B1, L.L.C.
4566448	KONDAUR VENTURES III, L.L.C.
4566455	KONDAUR VENTURES III OFFSHORE, L.L.C.
4566449	KONDAUR VENTURES III OFFSHORE REO 1, L.L.C.
4545703	KONDAUR VENTURES II, L.L.C.
4549515	KONDAUR VENTURES II OFFSHORE, L.L.C.
4558190	KONDAUR VENTURES II OFFSHORE REO 1, L.L.C.

4530019	<u>KONDAUR VENTURES I, LLC</u>
4587546	<u>KONDAUR VENTURES IV B1, L.L.C.</u>
4587545	<u>KONDAUR VENTURES IV, L.L.C.</u>
4587547	<u>KONDAUR VENTURES IV OFFSHORE, L.L.C.</u>
4587548	<u>KONDAUR VENTURES IV OFFSHORE REO 1, L.L.C.</u>
4695761	<u>KONDAUR VENTURES IX B1, L.L.C.</u>
4695758	<u>KONDAUR VENTURES IX, L.L.C.</u>
4695769	<u>KONDAUR VENTURES IX OFFSHORE, L.L.C.</u>
4695772	<u>KONDAUR VENTURES IX OFFSHORE REO 1, L.L.C.</u>
4612012	<u>KONDAUR VENTURES V B1, L.L.C.</u>
4634842	<u>KONDAUR VENTURES VI B1, L.L.C.</u>
4637111	<u>KONDAUR VENTURES VII B1, L.L.C.</u>
4682513	<u>KONDAUR VENTURES VIII B1, L.L.C.</u>
4682510	<u>KONDAUR VENTURES VIII, L.L.C.</u>
4682515	<u>KONDAUR VENTURES VIII OFFSHORE, L.L.C.</u>
4682517	<u>KONDAUR VENTURES VIII OFFSHORE REO 1, L.L.C.</u>
4637109	<u>KONDAUR VENTURES VII, L.L.C.</u>
4637115	<u>KONDAUR VENTURES VII OFFSHORE, L.L.C.</u>
4637116	<u>KONDAUR VENTURES VII OFFSHORE REO 1, L.L.C.</u>
4634838	<u>KONDAUR VENTURES VI, L.L.C.</u>
4634846	<u>KONDAUR VENTURES VI OFFSHORE, L.L.C.</u>
4634851	<u>KONDAUR VENTURES VI OFFSHORE REO 1, L.L.C.</u>
4611696	<u>KONDAUR VENTURES V, L.L.C.</u>
4611697	<u>KONDAUR VENTURES V OFFSHORE, L.L.C.</u>
4611699	<u>KONDAUR VENTURES V OFFSHORE REO 1, L.L.C.</u>
4711830	<u>KONDAUR VENTURES X B1, L.L.C.</u>
4711826	<u>KONDAUR VENTURES X, L.L.C.</u>
4711834	<u>KONDAUR VENTURES X OFFSHORE, L.L.C.</u>
4711838	<u>KONDAUR VENTURES X OFFSHORE REO 1, L.L.C.</u>

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VERIFIED COMPLAINT

EXHIBIT "C"



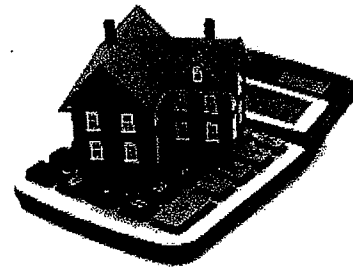
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Welcome to Kondaaur Capital Corporation

Kondaaur Capital Corporation is the only premier purchaser of Scratch & Dent residential mortgage loans. Kondaaur maximizes its bids through its unique management, servicing and liquidation strategies.

Kondaaur will competitively bid any type of one-to-four family residential loans whatsoever, including

- "Story" loans
- Hyper-defaulted loans
- Loans secured by unique properties
- Loans with origination fraud
- Loans with regulatory violations
- Loans rejected for investor purchase



KONDAUR WILL BID ON A SINGLE LOAN ON A ONE TIME BASIS OR ON A POOL OF LOANS. KONDAUR WILL GIVE LOAN LEVEL PRICING ON WHICH A SELLER MAY "CHERRY PICK" LOANS TO SELL.

VERIFIED COMPLAINT

EXHIBIT "D"



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Kondaur News

Kondaur News

Scratch-and-Dent Loan Market Offers Outlet

MBA Newslink Volume 7, Issue 69

By Vijay Palaparty

While **scratch-and-dent loans** accumulate and restrict cash, loan **sellers** now have the option of turning to an emerging market of loan **buyers** who offer **liquidation**. Sale of such loans provides **refinance** or **resale** opportunities, sometimes also ending in **foreclosure**.

"What drives the scratch and dent market is the seller of the loan who has a need for liquidity; otherwise the seller would not sell the loan at a discount," said Jon Daurio, chairman and CEO of **Kondaur Capital Corp.**, Santa Ana, Calif.

Daurio said a loan is scratch-and-dent for any of the following three reasons: loan **performance** —the loan is either in default or was previously in default; a loan where a **regulation** was violated in the origination process; or for **underwriting** reasons that involve fraud.

Companies such as Kondaur Capital have entered the market, buying loans at huge discounts with the potential of repackaging and selling the loans.

"The process involves high-touch **due diligence** management," Daurio said. "We might refinance or restructure the loans or we may resell them. If it's a **nonperforming** loan, we may get a **died-in-lieu**. What we do is characterize borrowers as those who have the ability and desire to pay and stay, those who should sell and go, and those who do nothing."

Daurio said that loan attributes play a significant part in purchasing decisions. From a due diligence perspective, the company conducts a two week to four week review of the loans to verify accuracy.

"In the scratch and dent world, most sellers don't have accurate information and many times the information is off," Daurio said. "Factors such as the status of the loan, unpaid balance and collateral values information result in us adjusting our price. Regardless, sellers should be figuring out what is a fair and reasonable amount for these loans."

As homeownership preservation efforts makes headlines, the scratch-and-dent market could make additional progress. "It's a win-win situation," Daurio said. "In the event that we may have to foreclose on a home, it's usually after we make every other effort to keep the borrower in the home. More often than not, the reason is because we can't reach the borrower at all."

"The incredible magnitude of repurchase obligations has led to a liquidity crisis in the mortgage banking industry," Daurio said. "Loan sellers typically do not have sufficient cash to repurchase the loans nor the ability to borrow sufficient cash. As a result, a scratch-and-dent loan buyers will arrange with the loan seller to buy the loan from the loan buyer at less than par, with the loan seller making up the difference. Such differences can and likely will, in the aggregate, amount to billions of dollars."

MBA Newslink Volume 7, Issue 69, Wednesday, April 09, 2008

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EXHIBIT 17

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-090122

02/10/2010

HONORABLE KAREN POTTS

CLERK OF THE COURT
M. Scott
Deputy

JAMES MCKINNEY

JAMES MCKINNEY
618 S WICKIUP RD
APACHE JUNCTION AZ 85119

v.

KONDAUR CAPITAL CORPORATION, et al.

MARK L COLLINS

SECURITY TITLE AGENCY
NO ADDRESS ON RECORD
PETER BAI
NO ADDRESS ON RECORD
PAULA CHASTAIN
NO ADDRESS ON RECORD
LARRY O FOLKS
LAURA E SIXKILLER
DEUTSCHE BANK TRUST COMPANY
DELAWARE
NO ADDRESS ON RECORD
DOCKET-CIVIL-CCC
PINAL COUNTY CLERK
RECORDS-CHANGE OF VENUE-CSC

MINUTE ENTRY

The Court has considered Defendant Kondaur Capital Corporation, Kondaur Venture X, LLC, and Kondaur Capital Trust Series 2009-3's Motion for Change of Venue, Defendant M&I Marshall and Ilsley Bank's Joinder in Motion for Change of Venue and Joinder of Defendant Folks and O'Connor, PLLC in Motion for Change of Venue.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-090122

02/10/2010

THE COURT FINDS that venue is properly within Pinal County as the subject real property is located in that County. Therefore,

IT IS ORDERED granting Defendants Kondaur's Motion for Change of Venue and transferring this matter to Pinal County for all further proceedings. The following Motions are pending:

- 1) Plaintiff's Application for TRO and Permanent Injunction and Order to Show Cause filed 1/4/10
- 2) Defendant. Kondaur's Motion to Quash TRO, Opposition to Request for Preliminary Injunction filed 1/15/10
- 3) Plaintiff's Application For Reversal of Lack of Good Faith- Post TRO, "Trustee's Sale" filed 1/15/10
- 4) Plaintiff's Motion for Summary Judgment filed 1/20/10
- 5) Plaintiff's Motion to Strike all Defendants Provident Funding Associates, LP and Max Default Services Corp.'s Motions, Pleadings, Etc., and Grant P's MSJ for Defendants and Defendants' Attorneys failure to Appear Pursuant to ARCP 5.1 and 11 and others filed 1/20/10; Defendant Kondaur's Opposition to Motion to Strike filed 1/29/10; Defendant Folks & O'Connor's Joinder of Defendant Kondaur's Opposition to Plaintiff's Motion to Strike filed 2/4/10; Defendant M & I Marshall and Ilsley Bank's Joinder in Defendant Kondaur's Opposition to Plaintiff's Motion to Strike filed 2/5/10
- 6) Plaintiff's Request for a Short Extension of Time to Respond to Defendant Kondaur's Motion to Quash filed 1/29/10
- 7) Defendant Kondaur's Motion to Dismiss as to James McKinney (the "Relative") filed 1/22/10; Defendant M & I Marshall & Ilsley Bank's Joinder in Motion to Dismiss James McKinney (the "Relative") filed 1/26/10
- 8) Plaintiff McKinney's Response to Defendant's Motion to Quash and Cross-Motion to First Adjudicate Defendant's Standing and to Strike Defendant's Pleadings for that Lack of Standing and Request to Hold Defendant's "Motion to Quash" in abeyance until that adjudication filed 1/29/10; Defendant Kondaur's Consolidated Reply to Plaintiff's Response to Motion to Quash TRO; Opposition to Request for Preliminary Injunction; and Opposition to Plaintiffs' Motion to Reverse Trustee's Sale and Opposition to Plaintiffs' Motions re: Standing filed 2/5/10; Defendant Folks & O'Connor, PLLC Joinder in Defendant Kondaur's Consolidated Reply to Plaintiffs' Response to Motion to Quash TRO; Opposition to Request for Preliminary Injunction; and Opposition to Plaintiffs' Motion to Reverse Trustee's Sale and Opposition to Plaintiffs' Motions re: Standing filed 2/5/10;

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-090122

02/10/2010

- 9) Plaintiffs McKinney's Notice of filing attachment to Plaintiffs' Response to Defendant's Motion to Quash and Cross-Motion to First Adjudicate Defendant's Standing and to Strike Defendant's Pleadings for that Lack of Standing and Request to Hold Defendant's "Motion to Quash" in abeyance until that adjudication filed 2/10/10
- 10) Defendant Kondaur's Motion to Strike or Extend Reply deadline filed 2/02/10 and;
- 11) Defendant Folks & O'Connor, PLLC's Motion to Dismiss filed 2/8/10
- 12) Defendant Folks & O'Connor, PLLC's Motion to Strike filed 2/9/10
- 13) Defendant M&I Marshall & Ilsley Bank's Joinder in the Kondaur, Defendants' Consolidated Reply to Plaintiffs' Response to Motion to Quash Temporary Restraining Order; Opposition to Request for Preliminary Injunction; and Motion for Change of Venue

IT IS FURTHER ORDERED that the Clerk of the Superior Court of Maricopa County transfer the file and all other documents to the Clerk of the Court, Pinal County, upon Defendant paying the required transmittal fee within the time limits and in the amount provided in A.R.S. §12-407, as amended.

/ s / HONORABLE KAREN POTTS

JUDICIAL OFFICER OF THE SUPERIOR COURT

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>

EXHIBIT 18

MAR 12 2010

JAMES MCKINNEY
618 S. WICKIUP ROAD
APACHE JUNCTION, ARIZONA 85119
(602) 717-7502
PROPRIA PERSONA

IN THE SUPERIOR COURT OF ARIZONA
PINAL COUNTY

JAMES MCKINNEY, an individual,
JAMES MCKINNEY, an individual,
Real Parties in Interest

Plaintiffs,

vs.

CASE NO: CV2010-00970

NOTICE OF CHANGE OF JUDGE

KONDAUR CAPITAL CORPORATION, a
Delaware Corporation; KONDAUR VENTURE
X, LLC; an Delaware LLC; KONDAUR
CAPITAL TRUST SERIES 2009-3, a Delaware
Statutory Trust; DEUTSCHE BANK TRUST
COMPANY DELAWARE, a Delaware
Corporation; PAULA CHASTAIN, an
individual; PETER BAI, an individual; FOLKS
AND O'CONNOR, PLLC, an Arizona LLC;
SECURITY TITLE AGENCY, an Arizona
Corporation; M & I MARSHALL AND
ILSLEY BANK, a Wisconsin Corporation;
JENNIFER MENGES; an individual; JOHN
JONES and JANE DOE JONES, husband and
wife, JOHN DOES and JANE DOES I-X; ABC
CORPORATIONS I-V; and XYZ
PARTNERSHIPS I-V; ABC LLCS I-V, XYZ
TRUSTS I-V;

Defendants.

Plaintiff JAMES MCKINNEY, Pursuant to Rule 42(f), Plaintiff hereby gives notice of change
of Judge from Judge O'Neil to a new judge. Plaintiffs certify that: the notice is timely; the party has
not waived the right under subsection (f) (1)(D) of the rule; and this Party has not previously been
granted a change of judge as a matter of right in the case.

RECEIVED

MAR 16 2010

LES

1 DATED this 12 day of March 2010.

2
3
4 James McKinney
Plaintiff Pro Per

5
6
7 James McKinney
Plaintiff Pro Per

8
9
10 **VERIFICATION**

11 I, James McKinney, under penalty of perjury, state, that I am a party to the above-entitled
12 litigation, that I have read the attached Change of Judge and know the contents therein, and the matters
and things stated therein, are true and correct to the best of my knowledge, information and belief.

13 DATED this 12th day of March 2010.

14
15 James McKinney

16
17
18 **VERIFICATION**

19 I, James McKinney, under penalty of perjury, state, that I am a party to the above-entitled
20 litigation, that I have read the attached Change of Judge and know the contents therein, and the matters
21 and things stated therein, are true and correct to the best of my knowledge, information and belief.

22 DATED this 12th day of March 2010.

23
24 James McKinney

1
2 CERTIFICATE OF SERVICE

3 ORIGINAL filed with the Clerk of the Court,
4 this 12 day of MARCH 2010, to:

5 ^{Final}
6 ~~Maricopa~~ County Superior Court
7 Southeast Division
8 222 E. Javelina Avenue
9 Mesa, AZ 85210-6201

10 A Copy of the foregoing was mailed
11 this 12 day of MARCH 2010 to:

12 Mark L Collins
13 Robert M. Savage
14 Gust Rosenfeld, P.L.C
15 One Church Avenue, Suite 100
16 Tucson, Arizona 85701-1849

17 Laura Sixkiller
18 Greenberg Traurig, LLP
19 2375 E. Camelback Road
20 Phoenix, Arizona 85016

21 Larry O. Folks
22 Kathleen A. Weber
23 FOLKS & O'CONNOR
24 Fax 602-256-9101
25 Phone 602-262-2265
26 1850 N. Central Avenue #1140
Phoenix, Arizona 85004

Jennifer C. Menges
1850 N. Central Avenue #1140
Phoenix, Arizona 85004

James McKinney

EXHIBIT 19

IN THE SUPERIOR COURT

Filed on 3/15/2010 2:43:34 PM

PINAL COUNTY, STATE OF ARIZONA

Date: 03/15/2010

THE HON GILBERTO V FIGUEROA

Heard By: THE HON WILLIAM J O'NEIL

Division: 1

By Judicial Assistant: JUDY GOSSMAN

JAMES MCKINNEY,

Plaintiff(s),

vs.

KONDAUR CAPITAL CORPORATION

Defendant(s).

S1100CV201000970

REASSIGNMENT OF JUDGE

The above entitled cause having been referred to the Honorable William J. O'Neil, Presiding Civil Judge, for reassignment, for the following reason:

A formal NOTICE OF CHANGE OF JUDGE having been timely filed by Plaintiff as to the Honorable William J. O'Neil.

IT IS HEREBY ORDERED reassigning the above entitled cause to the Honorable Gilberto V. Figueroa in Division 4, for all further proceedings herein.

Mailed/e-mailed distributed copy: 03/15/2010

JAMES MCKINNEY
618 S WICKIUP RD
APACHE JUNCTION AZ 85119

MARK L COLLINS
LAURA SIXKILLER
LARRY O FOLKS

OFFICE DISTRIBUTION:

DIV 4

JUDGE UPDATE

EXHIBIT 20

1 **GUST ROSENFELD P.L.C.**
2 One S. Church Ave., Suite 1900
3 Tucson, Arizona 85701-1627
4 Tel.: (520) 628-7070
5 Fax: (520) 624-3849
6 By: Mark L. Collins, SB #003929 (mcollins@gustlaw.com)
7 Robert M. Savage, SB #020662 (rsavage@gustlaw.com)

8 *Attorneys for Defendants Kondaur Capital Corporation,*
9 *Kondaur Venture X, LLC, Kondaur Capital Trust Series 2009-3*
10 *Paula Chastain and Peter Bai*

11
12 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
13
14 **IN AND FOR THE COUNTY OF PINAL**

15 JAMES McKINNEY, an individual, and
16 JAMES McKINNEY, an individual,

17 Plaintiffs,

18 vs.

19 KONDAUR CAPITAL CORPORATION, a
20 Delaware corporation; KONDAUR VENTURE
21 X, LLC, a Delaware LLC; KONDAUR
22 CAPITAL TRUST SERIES 2009-3, a Delaware
23 statutory trust; DEUTSCHE BANK TRUST
24 COMPANY DELAWARE, a Delaware
25 corporation; PAULA CHASTAIN, an
26 individual; PETER BAI, an individual; FOLKS
AND O'CONNOR, PLLC, an Arizona LLC;
SECURITY TITLE AGENCY, an Arizona
corporation; M&I MARSHALL AND ILSLEY
BANK, a Wisconsin corporation; JOHN DOES
and JANE DOES, husband and wife; JOHN
DOES and JANE DOES I-X; ABC
CORPORATIONS I-V; XYZ
PARTNERSHIPS I-V; and ABC LLCs I-V;
XYZ TRUSTS I-V,

Defendants.

No. CV2010-00970

**OBJECTION TO PLAINTIFFS'
NOTICE OF CHANGE OF JUDGE**

(Hon. William J. O'Neil)

27
28 In their continuing effort to forum shop, Plaintiffs have filed a Notice of Change of
29 Judge attempting to remove this matter from the consideration of the Honorable William
30 O'Neil. Because Judge O'Neil has previously ruled on Plaintiffs' request for a temporary

1 restraining order, Plaintiffs' have waived the right to peremptorily strike Judge O'Neil.
2 Accordingly, the Kondaur Defendants'¹ request that the Court reject Plaintiffs' Notice of
3 Change of Judge.

4
5 **BACKGROUND**

6 The genesis of this lawsuit occurred on August 8, 2009, when Plaintiff James
7 McKinney filed Pinal County Superior Court Case Number CV2009-03764 ("First Lawsuit")
8 seeking a temporary restraining to stop a non-judicial trustee's sale ("Trustee's Sale") of
9 property in Pinal County that he had pledged as security for a debt. Judge O'Neil conducted an
10 ex-parte hearing, after which he denied McKinney's request because it was procedurally
11 defective. The Court also informed McKinney that he could renew his request upon satisfaction
12 of the applicable procedural requirements.

13 On January 4, 2010, rather than renewing his TRO application in the already pending
14 Pinal Lawsuit, McKinney and his son (the second Plaintiff James McKinney) chose instead to
15 forum shop by filing Maricopa County Superior Court Case Number CV2010-090122 (the
16 "Second Lawsuit") seeking the precisely the same relief Judge O'Neil had denied in the First
17 Lawsuit. Sometime during January 5, 2010, McKinney appeared *ex parte* before the Maricopa
18 County Superior Court Judge Karen Potts and obtained a temporary restraining order in the
19 Second Lawsuit. Thereafter, the Kondaur Defendants made their appearance, moved to quash
20 the temporary restraining order, and moved to transfer venue back to Pinal County Superior
21 Court. Judge Potts granted the request for change of venue. Apparently dissatisfied with Judge
22
23

24
25 ¹ The Kondaur Defendants consist of Kondaur Capital Corporation, Kondaur Venture X, LLC, Kondaur
26 Capital Trust Series 2009-3, Paula Chastain, and Peter Bai.


1 O'Neil's assignment to the Second Lawsuit, Plaintiffs have now filed a Notice of Change of
2 Judge.

3 **DISCUSSION**

4 Rule 42(D), Ariz. R. Civ. P., contemplates that once a judge has ruled on a party's
5 request for substantive relief, the parties to that matter have waived their right to a change of
6 judge. Although Plaintiffs procedural gamesmanship has made application of this rule
7 awkward, it should nonetheless apply here where McKinney has already presented his request
8 for a temporary restraining order to Judge O'Neil in the First Lawsuit. Plaintiffs should not be
9 rewarded for their efforts to engage in forum shopping by re-filing the same cause of action in
10 Maricopa County and then, upon transfer of venue, arguing they have a renewed right to a
11 change of judge.
12

13 RESPECTFULLY SUBMITTED March 17, 2010.

14 **GUST ROSENFELD, P.L.C.**

15
16
17 By: 
18 Mark L. Collins
19 Robert M. Savage
20 Attorneys for Kondaur Capital Corporation,
21 Kondaur Venture X, LLC, Kondaur Capital
22 Trust Series 2009-3, Paula Chastain and
23 Peter Bai
24
25
26

22 Original mailed for filing March 17, 2010
23 with a copy to:

24 The Honorable William J. O'Neil
25 PINAL COUNTY SUPERIOR COURT
26

1 Copies mailed March 17, 2010 to:

2 James McKinney
3 James McKinney
4 618 S. Wickiup Road
5 Apache Junction, AZ 85119
6 *Pro Per Plaintiffs*

7 Laura Sixkiller
8 GREENBERG TRAUIG, LLP
9 2375 E. Camelback Road, Ste 700
10 Phoenix, AZ 85016
11 *Attorneys for Defendant M&I Marshall & Ilsley Bank*

12 Larry O. Folks
13 Kathleen Weber
14 FOLKS & O'CONNOR, PLLC
15 1850 N. Central Ave., Ste. 1140
16 Phoenix, AZ 85004
17 *Attorneys for Defendant Folks & O'Connor, PLLC*

18 By: Mary Ellen Shannon
19
20
21
22
23
24
25
26

EXHIBIT 21

FOLKS & O'CONNOR, PLLC
1850 NORTH CENTRAL AVE, SUITE 1140
PHOENIX, ARIZONA 85004
(602) 262-2265

1 Larry O. Folks, #012142
2 Kathleen A. Weber, #016076
3 FOLKS & O'CONNOR, PLLC
4 1850 N. Central Ave, #1140
5 Phoenix, Arizona 85004
6 (602) 515-0129
7 (weber@folksoconnor.com)
8 *Attorneys for Defendant Folks &*
9 *O'Connor, PLLC*

10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **IN AND FOR THE COUNTY OF PINAL**

12 JAMES McKINNEY, an individual,
13 JAMES McKINNEY, an individual,
14 Real Parties in Interest,

15 Plaintiffs,

16 vs.

17 KONDAUR CAPITAL
18 CORPORATION, a Delaware
19 corporation; et al.,

20 Defendants.

Case No.: CV2010-00970

**JOINDER OF DEFENDANT FOLKS
& O'CONNOR, PLLC IN KONDAUR
DEFENDANTS' OBJECTION TO
PLAINTIFFS' NOTICE OF
CHANGE OF JUDGE**

(Hon. William J. O'Neil)

21 Defendant Folks & O'Connor, PLLC hereby joins the Objection to Plaintiffs'
22 Notice of Change of Judge filed by co-defendants Kondaur Capital Corporation,
23 Kondaur Venture X, LLC and Kondaur Capital Trust Series 2009-3 on March 17, 2010
24 (the "Kondaur Objection"). For the sake of brevity, Folks & O'Connor, PLLC
25 incorporates by reference the Kondaur Objection as if fully set forth herein.

26 WHEREFORE, for all of the foregoing reasons, Folks & O'Connor, PLLC
respectfully requests that the Court reject Plaintiffs' Notice of Change of Judge.

///

///

///

///

RECEIVED

MAR 19 2010

LES

FOLKS & O'CONNOR, PLLC
1850 NORTH CENTRAL AVE, SUITE 1140
PHOENIX, ARIZONA 85004
(602) 262-2265

1 RESPECTFULLY SUBMITTED this 18th day of March, 2010.

2 FOLKS & O'CONNOR, PLLC

3 By

Kathleen A. Weber
Larry O. Folks

Kathleen A. Weber

Suite 1140

1850 North Central Avenue

Phoenix, AZ 85004

Attorneys for Defendant Folks &
O'Connor, PLLC

4
5
6
7
8
9 ORIGINAL of the foregoing filed
this 18th day of March, 2010, to:

10 Clerk of the Pinal County Superior Court
11 971 N. Jason Lopez Circle, Building A
12 Florence, AZ 85232

13 COPY of the foregoing hand-delivered
this 18th day of March, 2010, to:

14 Hon. William J. O'Neil
15 Pinal County Superior Court
16 971 N. Jason Lopez Circle, Building A
Florence, AZ 85232

17 COPY of the foregoing mailed via first
18 class mail and email this 18th day of March, 2010, to:

19 Mark L. Collins, Esq.*
20 Robert M. Savage, Esq.*
21 Gust Rosenfeld P.L.C.
22 One S. Church Avenue, Suite 1900
23 Tucson, AZ 85701-1627
24 Attorneys for Defendants Kondaur Capital
25 Corporation, Kondaur Venture X, LLC, and
26 Kondaur Capital Trust Series 2009-3

FOLKS & O'CONNOR, PLLC
1850 NORTH CENTRAL AVE, SUITE 1140
PHOENIX, ARIZONA 85004
(602) 262-2265

1 Laura Sixkiller, Esq.*
2 Greenberg Traurig, LLP
3 2375 East Camelback Road, Suite 700
4 Phoenix, AZ 85016
5 *Attorneys for Defendant M&I Marshall and Ilsley Bank*

6 James McKinney
7 James McKinney
8 618 S. Wickiup Road
9 Apache Junction, AZ 85119
10 *Plaintiffs, pro per*

11 By 
12 *An Employee of Folks & O'Connor, PLLC*

EXHIBIT 22

Received
APR 06 2010

IN THE SUPERIOR COURT
PINAL COUNTY, STATE OF ARIZONA

APR - 5 2010

DATE: 4/5/2010

THE HON GILBERTO V FIGUEROA

Division: 4

By, Phyllis Yedica Judicial Administrative Assistant

**JAMES McKINNEY, an
individual,**

Plaintiff(s),

vs.

**KONDAUR CAPITAL
CORPORATION, a Delaware
corporation; et al.,**

Defendant(s).

CASE #S1100CV201000970

**NOTICE/ORDER REFERRING TO
CIVIL PRESIDING JUDGE**

This matter was assigned to this Court by Minute Entry dated March 15, 2010 issued by Presiding Civil Judge William J. O'Neil.

The assignment of the matter to this Court was in response to a Notice of Change of Judge filed by Plaintiffs on March 12, 2010.

In reviewing the file(s), this Court found that Defendants Kondaur & Folks & O'Connor filed objections to the Notice of Change of Judge on March 19, 2010.

Clearly, the objections from the Defendants were not of record when the Honorable William J. O'Neil, as Presiding Civil Judge, assigned the matter to this Court.

Since the Honorable William J. O'Neil was also the "assigned" Judge in the original Pinal County Case (No. CV 2009 03764),

IT IS HEREBY ORDERED referring this matter to the Honorable William J. O'Neil to determine whether the objection's to the Notice of Change of Judge have merit.

DATED this 5th day of April, 2010.

GILBERTO V. FIGUEROA

Hon. Gilberto V. Figueroa
Division IV

Mailed/distributed copies:

JAMES McKINNEY
618 S WICKIUP ROAD
APACHE JUNCTION AZ 85119

MARK L COLLINS
ROBERT M SAVAGE
GUST ROSENFELD PLC
ONE CHURCH AVENUE, STE 100
TUCSON AZ 85701-1849

LAURA SIXKILLER
GREENBERG TRAURIG LLP
2375 E CAMELBACK ROAD
PHOENIX AZ 85016

LARRY O FOLKS
KATHLEEN A WEBER
FOLKS & O'CONNOR
1850 N CENTRAL AVENUE #1140
PHOENIX AZ 85004

JENNIFER C MENGES
1850 N CENTRAL AVENUE, #1140
PHOENIX AZ 85004

EXHIBIT 23

IN THE SUPERIOR COURT

PINAL COUNTY, STATE OF ARIZONA

Date: 05/26/2010

THE HON WILLIAM J O'NEIL

Division: 1

By Judicial Assistant: JUDY GOSSMAN

JAMES MCKINNEY)	<u>S1100CV201000970</u>
)	
)	NOTICE
Plaintiff(s),)	
)	
vs.)	RULING ON MOTIONS/ISSUES
)	
KONDAUR CAPITAL CORPORATION)	
)	
Defendant(s).)	

A Notice of Change of Judge was filed by the Plaintiff on March 12, 2010. On March 19, 2010, Defendant filed a timely Objection to Plaintiff's Notice of Change of Judge. This Division being unaware of the objection ordered the case transferred to the Honorable Gilberto V. Figueroa. Upon reviewing the file, Judge Figueroa returned the case to this Division to determine the timeliness of the change of judge.

The subject matter of this lawsuit and its underlining issues were first filed with this Court in Cause No. CV 200903764 when the Plaintiff James McKinney sought a temporary restraining order to stop a non-judicial trustee's sale of property in Pinal County. That request was considered by this Judge who then declined the request because it was procedurally defective. The Court informed Mr. McKinney that he could renew his request upon satisfaction of the applicable procedural requirements. The Court in detail outlined those procedural defects and directed that the Plaintiff could supplement or refile his request in compliance with state law and the rules to resolve those procedural defects. Plaintiff made no corrections and chose instead to proceed with the service of his lawsuit. That Plaintiff knew that venue was proper in Pinal County is manifest by his declaration in his original Complaint and the filing of his attached lis pendens in Pinal County. On September 22 the Defendant Security Title Agency, Inc. filed a Motion to Dismiss the Complaint for Failure to State a Cause Upon Which Relief Could Be Granted. Oral argument was scheduled for October 26. On October 19, 2009, the Defendant Folks & O'Connor PLLC filed a Motion to Dismiss on the grounds that the action was barred by A.R.S. §33-807(E) and other procedural deficiencies. After oral argument on October 26, 2009, the Motion to Dismiss of

Security Title Agency, Inc. was granted. On November 10 Plaintiff responded to Defendant Folks & O'Connor's Motion to Dismiss. With that motion pending, Plaintiff filed this present action on January 4 in the Superior Court of Arizona in Maricopa County in Maricopa County cause CV 2010-090122 seeking the same relief that was still pending in Pinal County. On January 6, 2010, Plaintiff filed documents entitled Notice of Dismissal Without Prejudice stating he was exercising this dismissal for venue, for incorrect venue of majority of witnesses, dismissal for venue of another party in interest. Plaintiff did not inform the Maricopa County Superior Court Judge of the still pending Pinal County action but rather chose to appear ex parte before Judge Potts. Ultimately a motion to change venue by defendants was filed and this case returned to Pinal County where the real property is situated. Plaintiff then filed his immediate Notice of Change of Judge as the case was assigned to Division 1.

The Objection to Plaintiff's Notice of Change of Judge was timely filed but not seen by this Judge. That objection argues that once a judge has ruled on a party's request for substantive relief, that party has waived the right to a change of judge. Here two motions to dismiss were actively opposed by Plaintiff and ruled upon by this Judge. In reply, Plaintiff states another plaintiff has joined the litigation with an identical name. In the Pinal County earlier cause, one James McKinney was listed and in the original verified complaint stated he was a retired individual living in the State of Arizona and is the individual who signed the actual Deed of Trust, which was attached. The Deed of Trust was notarized as being signed by James H. McKinney. In the Opposition to Notice of Change of Judge, one of the James McKinneys states he is a new plaintiff and that he filed the temporary restraining order in Maricopa County and is different from the other plaintiff. However, the pleadings list both plaintiffs. Both plaintiffs filed the litigation in Maricopa County.

The ruling on the timeliness of a Notice of Change of Judge is to be made by the trial judge rather than the civil presiding judge or some other judge. *Dunn ex. rel. Dunn v. Superior Court ex. rel. County of Maricopa*, 160 Ariz. 311, 772 P.2d 1164 (Ct. App. 1989). Plaintiff, by adding an additional plaintiff, does not gain an additional right to a change of judge. Rule 42(f) is specific in stating, "Each action, whether singular or consolidated, shall be treated as having only two sides." It is not the number of attorneys or parties on each side; it is that each side has a single notice of change of judge. When one party waives the right to a change of judge without cause, they thereby lose the right by adding an additional plaintiff to remove the judge without cause.

The 1996 amendments of the Rule made significant revisions to the waiver provisions of Rule 42(f)(1)(D). A party waives a right to notice of change of any judge who has been permanently assigned to the action if the party previously agreed that the action could be assigned to that judge or the court denied a motion or ruled on a contested issue. The specific waiver provisions of the rule are intended to prohibit a party from

peremptorily challenging a judge after discovering the judge's viewpoint on any significant aspect of the case. *Williams v. Superior Court In and For County of Maricopa*, 190 Ariz. 80, 945 P.2d 391 (Ct. App. Div 1 1997).

Plaintiff sought an improper collateral appeal. This Court having already ruled on the initial pleadings and Motion to Dismiss, it was improper of Plaintiff to proceed and file substantially identical litigation with identical parties in the Superior Court in a different county while the Pinal County action was pending. No new circumstances had arisen. Plaintiff cannot void that clear appearance by his argument that a single count was dropped or a single party was dropped. "Judge shopping" is strongly frowned upon. *Hibbs v. Calcot Ltd.*, 166 Ariz. 210, 801 P.2d 445 (App. 1990). See also *Smooles v. Maricopa County*, 177 Ariz. 185, 866 P.2d 167 (Tax Ct. 1993) outlining the disapproval of collateral appeals.

The Notice of Change of Judge is stricken as being untimely. This matter is permanently assigned to the Honorable William J. O'Neil.

A Motion to Strike All Defendants was submitted. No good cause showing therefrom,

IT IS ORDERED denying the motion.

An Application for Reversal of Lack of Good Faith Post TRO was filed by Plaintiff. No good cause showing therefrom,

IT IS FURTHER ORDERED denying the motion.

A Motion to Dismiss was filed by Kondaur and joined by M&I Bank as well as Kondaur Defendants' Cross-Motion for Summary Judgment. Oral argument is set on the same on Monday, June 7, 2010 at 2:30 p.m. in Division 1 before the Honorable William J. O'Neil.

A Cross-Motion to First Adjudicate Defendants' Standing was submitted. Good cause not showing therefrom,

FURTHER ORDERED denying the motion.

A Motion to Strike Defendants' Pleadings for That Lack of Standing and a Request to Hold Defendants' Motion to Quash in Abeyance was submitted;

FURTHER ORDERED denying the motions as no good cause is demonstrated.

Plaintiff confuses standing with jurisdiction. The Court has jurisdiction to hear this matter and without limitation by state law even though Defendant failed to register as a foreign corporation. The Supreme Court of the United States has long recognized that "principles of interstate federalism" dictate limits on the exercise of state court

jurisdiction. *Worldwide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 Sup. Ct. 559, 62 L.Ed. 2nd 490 (1980). The traditional framework for determining the constitutionality of the exercise of jurisdiction over persons and things was set forth in *Pennoyer v. Neft*, 95 U.S. 714, 24 L.Ed 565 (1877). That Supreme Court held that the central inquiry effectively was "is it there?" In other words, the Court is to ask whether the defendant or the property sought was within the territorial boundaries of the state. Here there is no question that the property is in Pinal County. To establish standing, petitioners need only show a particularized injury to themselves. That is the precise allegation which Plaintiff argues Defendants have caused them. It is not an issue of whether Defendants have come into the state and asked for relief. To the contrary, it is Plaintiffs themselves who are stating that Defendants have injured them. Plaintiffs necessarily then argue that the Defendants have no right to defend themselves. That argument is nonsensical.

FURTHER ORDERED quashing the Temporary Restraining Order. There was no justification for Plaintiffs to obtain a temporary restraining order without notice. Nothing is presented to suggest that Plaintiffs were unaware of how to contact Defendants. To the contrary, for months they were in litigation with those very defendants in the companion case. It is an extraordinary abuse of process that Plaintiffs suggest an inability to inform the very entities they were in active litigation with of their intent to seek a temporary restraining order. Further, the temporary restraining order was not effective because it had not been served prior to the trustee's sale occurring. The temporary restraining order, as a result, was moot. Further, Plaintiff knew of and had received a Notice of Trustee's Sale. A.R.S. §33-811(C) is clear that when a debtor receives a notice of a trustee's sale he waives all defenses and objections not raised in an action that results in the issuance of a court order which had to be obtained prior to 5:00 p.m. on January 4, 2010. That was not done.

FURTHER ORDERED denying the Motion to Reverse Trustee's Sale.

FURTHER ORDERED setting this matter for Status Conference to determine an orderly process for the Court and the parties to address any other pending motions besides the Motion to Dismiss. The Status Conference will be conducted after argument on the Motion to Dismiss.

FURTHER ORDERED that Plaintiffs shall appear in person with documents to differentiate them. By way of example, an Arizona driver's license, an Arizona identification card or other forms of identification that have the full name listed with birth date issued by a government entity.

The Court further having considered the potential Motion to Amend Pleadings as suggested by one of the Plaintiffs is DENIED as it does not comply with the Rules of Civil Procedure.

Filed on 5/26/2010 3:45:17 PM

Mailed/e-mailed distributed copy: 05/26/2010

JAMES MCKINNEY
618 S WICKIUP RD
APACHE JUNCTION AZ 85119

MARK L COLLINS
LAURA SIXKILLER
LARRY O FOLKS

EXHIBIT 24

UNITED STATES BANKRUPTCY COURT District of Arizona

Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines

A chapter 7 bankruptcy case concerning the debtor(s) listed below was filed on 6/30/10.

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

See Reverse Side For Important Explanations

Debtor(s) (name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address):

JAMES MCKINNEY
618 S WICKIUP
APACHE JUNCTION, AZ 851119

Case Number:
4:10-bk-20519-JMM

Social Security / Individual Taxpayer ID / Employer Tax ID / Other
nos:
xxx-xx-7314

Attorney for Debtor(s) (name and address):

JAMES MCKINNEY
618 S WICKIUP
APACHE JUNCTION, AZ 851119
Telephone number:

Bankruptcy Trustee (name and address):

TRUDY A. NOWAK
PMB #418
4802 E. RAY RD., #23
PHOENIX, AZ 85044-6417
Telephone number: 480-759-0524

Meeting of Creditors

Date: August 6, 2010

Time: 01:00 PM

Location: Property Conference Center, 1251 W. Gila Bend Hwy, Casa Grande, AZ

Presumption of Abuse under 11 U.S.C. § 707(b)

See "Presumption of Abuse" on reverse side.

The presumption of abuse does not arise.

Deadlines:

Papers must be *received* by the bankruptcy clerk's office by the following deadlines:

Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Debts: 10/5/10

Deadline to Object to Exemptions:

Thirty (30) days after the *conclusion* of the meeting of creditors.

Creditors May Not Take Certain Actions:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Please Do Not File a Proof of Claim Unless You Receive a Notice To Do So.

Creditor with a Foreign Address:

A creditor to whom this notice is sent at a foreign address should read the information under "Do Not File a Proof of Claim at This Time" on the reverse side.

Address of the Bankruptcy Clerk's Office:

U.S. Bankruptcy Court, Arizona
38 S. Scott Avenue
Tucson, AZ 85701-1704
Telephone number: (520) 202-7500

For the Court:

Clerk of the Bankruptcy Court:
Brian D. Karth

Hours Open: Monday - Friday 9:00 AM - 4:00 PM

Date: 7/7/10

EXHIBIT 25

AUG 2 - 2010

JAMES MCKINNEY
618 S. Wickiup Road
Apache Junction, Arizona 85119
Propria Persona

IN THE SUPERIOR COURT OF ARIZONA
PINAL COUNTY

JAMES MCKINNEY, an individual,
JAMES MCKINNEY, an individual,
Real Parties in Interest

Plaintiffs,

vs.

CASE NO.: CV2010-00970

NOTICE OF BANKRUPTCY STAY

KONDAUR CAPITAL CORPORATION,
a Delaware Corporation; KONDAUR
VENTURE X, LLC; an Delaware LLC;
KONDAUR CAPITAL TRUST SERIES
2009-3, a Delaware Statutory Trust;
DEUTSCHE BANK TRUST COMPANY
DELAWARE, a Delaware Corporation;
PAULA CHASTAIN, an individual; PETER
BAL, an individual; FOLKS AND
O'CONNOR, PLLC, an Arizona LLC;
M & I MARSHALL AND ILSLEY BANK,
a Wisconsin Corporation; JENNIFER
MENGENS; an individual; JOHN JONES and
JANE DOE JONES, husband and wife, JOHN
DOES and JANE DOES I-X; ABC
CORPORATIONS I-V; and XYZ
PARTNERSHIPS I-V; ABC LLCs I-V, XYZ
TRUSTS I-V;

Defendants.

TO: THE CLERK OF THE SUPERIOR COURT AND ALL PARTIES HERETO
AND THEIR ATTORNEYS

1 the June 30, 2010 date forward, originating from the United States Bankruptcy Court, District
2 of Arizona.

3 On June 30, 2010, James McKinney informed the Pinal Superior Court in writing and
4 by an arranged call that afternoon, that a Chapter 7 bankruptcy in the United States
5 Bankruptcy Court had been filed.
6

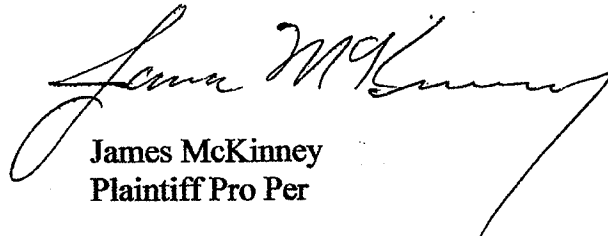
7 Again, notice is hereby given that James McKinney (I) (*the borrower*), filed
8 bankruptcy. The name and address of the debtor is James McKinney, 618 S. Wickiup, Apache
9 Junction, Arizona 85119.
10

11 All suits and proceedings from alleged creditors are stayed, compelling them to submit
12 to the bankruptcy proceedings, and to file legitimate substantiated proof of claim, if any.

13 Effective of filing, the bankruptcy stays all proceedings against the Debtor pursuant to
14 the Bankruptcy code.
15

16 Debtor is in the process of securing an attorney.

17 DATED this 2nd day of August 2010.
18

19 
20 James McKinney
21 Plaintiff Pro Per
22
23
24
25
26

CERTIFICATE OF SERVICE

ORIGINAL filed with the Clerk of the Court,
hand-delivered this 2nd day of August 2010, to:

Clerk of the Court
Pinal County Superior Court

A Copy of the foregoing was mailed
this 2nd day of August 2010 to:

Mark L Collins
Robert M. Savage
Gust Rosenfeld, P.L.C
One Church Avenue, Suite 1900
Tucson, Arizona 85701-1849

Laura Sixkiller
Greenberg Traurig, LLP
2375 E. Camelback Road
Phoenix, Arizona 85016

Larry O. Folks
Kathleen A. Weber
FOLKS & O'CONNOR
Fax 602-256-9101
Phone 602-262-2265
1850 N. Central Avenue #1140
Phoenix, Arizona 85004

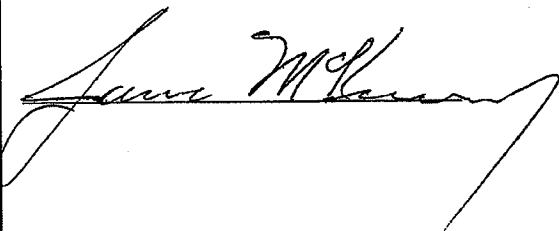
A handwritten signature in black ink, appearing to read "Laura Sixkiller", is written over a horizontal line. The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

EXHIBIT 26

SIGNED.

Dated: August 11, 2010




JAMES M. MARLAR
Chief Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:

JAMES MCKINNEY,

Debtor.

JAMES MCKINNEY,

Plaintiff,

vs.

KONDAUR CAPITAL CORPORATION, a
Delaware Corporation; KONDAUR VENTURE X,
LLC; an Delaware LLC; KONDAUR CAPITAL
TRUST SERIES 2009-3, a Delaware Statutory Trust;
DEUTSCHE BANK TRUST COMPANY
DELAWARE, a Delaware Corporation; PAULA
CHASTAIN, an individual; PETER BAI, an
individual; FOLKS AND O'CONNOR, PLLC, an
Arizona LLC; M & I MARSHALL AND ILSLEY
BANK, a Wisconsin Corporation; JENNIFER
MENGENS; an individual; JOHN JONES and JANE
DOE JONES, husband and wife, JOHN DOES and
JANE DOES I-X; ABC CORPORATIONS I-V; and
XYZ PARTNERSHIPS I-V; ABC LLCs I-V, XYZ
TRUSTS I-V;

Defendants.

Chapter 7

No. 4:10-bk-20519-JMM

Adversary No. 4:10-ap-01440-JMM

ORDER

The pro se Chapter 7 Debtor herein has filed documents with this court "removing" Pinal County Superior Court cases to the United States Bankruptcy Court (ECF No. 1). This removal attempt is legally improper for several reasons:

1. As a Chapter 7 case, the Debtor is no longer in control of his assets. The assets, including litigation, are property of the estate. The estate is now under the complete control of the case Trustee, Trudy A. Nowak, Esq. 11 U.S.C. § 541(a); § 323.
2. Any litigation against the Debtor is stayed. 11 U.S.C. § 362(a). Any litigation wherein the Debtor is the plaintiff is controlled by the Trustee. The Debtor has no further voice.
3. The Debtor is without legal standing to pursue or continue litigation unless the Trustee abandons it from the estate. 11 U.S.C. § 554.

IT IS ORDERED that the removal notices filed by the Debtor be, and are hereby declared VOID and of NO EFFECT;¹ and

IT IS FURTHER ORDERED that the Clerk of the Bankruptcy Court shall take no action upon said notices, without further order of the court.

DATED AND SIGNED ABOVE.

COPIES to be sent by the Bankruptcy Notification Center ("BNC") to the following:

The Honorable William J. O'Neil, Judge, Pinal County Superior Court, P.O. Box 847, Florence, AZ 85132-0847

James McKinney

Robert M. Savage

Laura Sixkiller, Greenberg Traurig, 2375 E. Camelback Rd., Phoenix, AZ 85016

Larry O. Folks, Folks & O'Connor, 1850 N. Central Ave., #1140, Phoenix, AZ 85004

Office of the U.S. Trustee

¹ While one of Debtor's notices reference Pinal Superior Court Case CV2010-00970, it appears the case number may actually be S-1100-CV-200903764 (The Hon. William J. O'Neil).

EXHIBIT 27


RECEIVED

FEB 23 2011

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FILED
CHAD A ROCHE
CLERK OF SUPERIOR COURT

2011 JAN 31 PM 4:39

BY  DEPUTY

1 **GUST ROSENFELD P.L.C.**

2 One S. Church Ave., Suite 1900

3 Tucson, Arizona 85701-1627

4 Tel.: (520) 628-7070

5 Fax: (520) 624-3849

6 Mark L. Collins, SB #003929 (mcollins@gustlaw.com)

7 Robert M. Savage, SB #020662 (rsavage@gustlaw.com)

8 *Attorneys for Defendants Kondaur Capital Corporation, Kondaur Venture X, LLC,*
9 *and Kondaur Capital Trust Series 2009-3, Paula Chastain and Peter Bai*

10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

11 **IN AND FOR THE COUNTY OF PINAL**

12 JAMES McKINNEY, an individual,
13 JAMES McKINNEY, an individual,
14 Real Parties In Interest,

15 Plaintiffs,

16 vs.

17 KONDAUR CAPITAL CORPORATION, a
18 Delaware corporation; KONDAUR VENTURE
19 X, LLC, a Delaware LLC; KONDAUR
20 CAPITAL TRUST SERIES 2009-3, a Delaware
21 statutory trust; DEUTSCHE BANK TRUST
22 COMPANY DELAWARE, a Delaware
23 corporation; PAULA CHASTAIN, an
24 individual; PETER BAI, an individual; FOLKS
25 AND O'CONNOR, PLLC, an Arizona LLC;
26 SECURITY TITLE AGENCY, an Arizona
corporation; M&I MARSHALL AND ILSLEY
BANK, a Wisconsin corporation; JOHN DOES
and JANE DOES, husband and wife; JOHN
DOES and JANE DOES I-X; ABC
CORPORATIONS I-V; XYZ
PARTNERSHIPS I-V; and ABC LLCs I-V;
XYZ TRUSTS I-V,

Defendants.

No. CV2010-00970

**RULE 54(b) JUDGMENT
ON THE MERITS**

24 The Court has received and considered the Motion for Summary Judgment filed by
25 Plaintiffs James McKinney (the "Borrower") and James McKinney (the "Relative"), the

1 Opposition and Cross-Motion for Summary Judgment filed by the Kondaur Defendants,¹ the
2 Joinder filed by Defendant M&I Marshall & Ilsley Bank ("M&I Bank"), and all of the
3 associated responses, oppositions, replies, and other memoranda. The Court has also received
4 and considered the Kondaur Defendants Notice of Lodging Form of Judgment and Request
5 Rule 54(b) Certification of a Judgment on the Merits. Upon full consideration of the issues, the
6 Court enters judgment as follows:

7
8 1. On June 30, 2010, the Borrower filed a Chapter 7 Petition for Bankruptcy in the
9 United States Bankruptcy Court for the District of Arizona ("Bankruptcy Court"). On that same
10 date, Plaintiffs' filed a purported Notice of Removal in this Court. The Borrower did not,
11 however, file a Notice of Removal with the clerk of the Bankruptcy Court.

12 2. Because this action was commenced by Plaintiffs, the automatic stay provisions
13 of 11 U.S.C. § 362 do not apply.

14 3. Plaintiffs' attempt to remove this matter to the United States Bankruptcy Court
15 ("Bankruptcy Court") was procedurally deficient because, *inter alia*, Plaintiffs failed to file a
16 notice of removal with the clerk of the Bankruptcy Court. *See* Fed. R. Bankruptcy P. 9027;
17 Local Rules of Bankruptcy Procedure for the District of Arizona 9027-1.

18 4. There are no genuine issues of fact and the Kondaur Defendants and M&I Bank
19 are entitled to judgment as a matter of law.

20 5. Pursuant to Rule 54(b) Ariz. R. Civ. P. there is no just reason for delay of the
21 entry of a final and appealable judgment on the merits with the Court addressing the Kondaur
22
23

24
25 ¹ The Kondaur Defendants consist of Kondaur Capital Corporation, Kondaur Venture X, LLC, Kondaur
26 Capital Trust Series 2009-3, Paula Chastain, and Peter Bai.

1 Defendants' application for attorneys' fees and costs by separate order.

2 **WHEREFORE IT IS ORDERED:**

3 A. Plaintiffs' Complaint is dismissed in its entirety with prejudice;

4 B. The Notice of Lis Pendens recorded by Plaintiffs in the office of the Pinal County
5 Recorder at **Fee Number 2010-000546** is hereby released and of no further effect whatsoever;

6 C. The Trustor's Revocation of Trusteeship and Constructive Notice recorded by
7 Plaintiffs in the Office of the Pinal County Recorder at **Fee Number 2010-000547** is hereby
8 released and of no further effect whatsoever.

9
10 DATED: 7/26/10

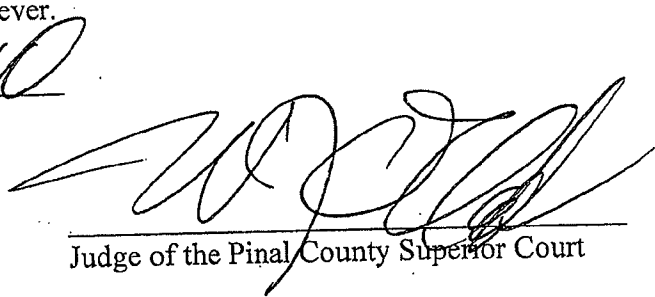
11
12 
13 Judge of the Pinal County Superior Court
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EXHIBIT 28

PINAL COUNTY, STATE OF ARIZONA

By Deputy Clerk: Erica Digiambattista

Page 1 of 3

As to the Plaintiff's Objection and Attempt to Clarify the Fact Record for Appeal filed with the Court on June 30, 2010,

IT IS FURTHER ORDERED striking Plaintiff's Objection and Attempt to Clarify the Fact Record for Appeal.

The Court FURTHER FINDS Plaintiff had notice of today's proceeding; however, failed to appear.

FURTHER ORDERED granting the Motion for Summary Judgment and Motion to Dismiss filed by counsel for Defendant, Folks and O'Conner, PLLC.

The Court FURTHER FINDS Res judicata does apply to said motion.

The Court FURTHER FINDS Jennifer Menges is not a litigant in this matter; therefore,

FURTHER ORDERED striking Jennifer Menges from being named on any future pleadings.

Upon request of counsel,

FURTHER ORDERED withdrawing the Motion to Dismiss as to James McKinney (The "Relative") filed by Gust Rosenfeld, P.L.C.

The court FURTHER FINDS the parties decline to argue the motions and submit on record.

FURTHER ORDERED formal judgment and dismissal order shall be signed upon presentation to the Court.

Mailed/distributed copy: 7/2/10

JAMES MCKINNEY
618 S WICKIUP RD
APACHE JUNCTION AZ 85119

MARK COLLINS

LAURA SIXKILLER

LARRY O FOLKS

Office Distribution:
DIV/1

EXHIBIT 29

RECEIVED

FEB 23 2011

LES

IN THE SUPERIOR COURT

PINAL COUNTY, STATE OF ARIZONA

Date: 01/31/2011

FILED
CHAD A ROCHE
CLERK OF SUPERIOR COURT

2011 JAN 31 PM 4:39

BY 
DEPUTY

THE HON DANIEL A WASHBURN.

By Judicial Assistant: Melva J. Watts

JAMES HOWARD MCKINNEY, et al.,

Plaintiff(s),

vs.

KONDAUR CAPITAL CORPORATION, et al.,

Defendant(s).

S1100CV201000970

NOTICE OF COURT RE-AFFIRMING
PRIOR JUDGMENT AND AWARD OF
ATTORNEY'S FEES AND COSTS

The Court having reviewed the file, including (i) Defendants' Form of Judgment lodged November 23, 2010, (ii) Plaintiffs' Objections to Judgment and Defendants' Proposed Form of Judgment and (iii) other related responses and objections to the Form of Judgment, finds as follows:

1. On July 26, 2010 Judge William O'Neil signed a form of Judgment submitted by Defendants entitled "Rule 54(b) Judgment on the Merits." It appears the judgment was not sent to the parties and not filed with the clerk. The judgment, however, was found within the file. A copy of this Judgment will be filed and sent to all parties along with this minute entry.
2. On November 29, 2010 Judge William O'Neil issued a minute entry order awarding Defendants' attorneys' fees in the amount of \$44,066.30 and costs in the amount of \$464.40.
3. The Court is not inclined to sign another form of judgment.

Therefore, the Court re-affirms Judge William O'Neil's Judgment signed on July 26, 2010 and Defendants' award of attorneys' fees and costs ordered by minute entry on November 26, 2010.

Furthermore, given the fact the Judgment has not been mailed to the parties until now, the date of entry of the judgment shall commence on the date of this minute entry for purposes of pro-trial motions and prosecuting appeals.

Signed this 31st Day of January, 2011



HON. DANIEL A. WASHBURN

Mailed/e-mail distributed copy: 01/31/2011

JAMES MCKINNEY
618 S WICKIUP RD
APACHE JUNCTION AZ 85119

MARK COLLINS
ATTY AT LAW

LAURA SICKILLER
ATTY AT LAW

LARRY O FOLKS
ATTY AT LAW

OFFICE DISTRIBUTION:
JUDGE/DANIEL A. WASHBURN